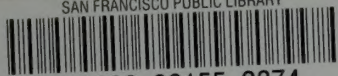
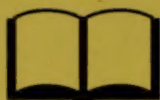


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BOOTH COOK, AIR QUALITY MANAGEMENT DISTRICT

WEDNESDAY, JUNE 26, 1991

1:57 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

STEPHEN D. ALBRIGHT, Member
South Coast Air Quality Management District

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Stephen D. Albright, Member of the South Coast Air Quality Management District.

Please come forward, Mr. Albright. We'll ask you that same question we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. ALBRIGHT: Mr. Chairman, I've enjoyed the privilege of serving as Governor Deukmejian's representative to the South Coast Air Quality Management District since 1988, and have been re-appointed by Governor Wilson.

It's been a pleasure to serve in a capacity that's very difficult. We've taken on some of the most strict, as you are aware, air quality problems in the world with an agency that is charged both by the federal government and by state government to clean up the most difficult air quality problem in the world.

I have a background in urban planning and land planning, and many of the issues that we're confronting are not only environmental in nature, but local government and public policy issues. So, it's been a pleasure to do that in a difficult situation, and I think that my qualifications bring something unique to the Board.

CHAIRMAN ROBERTI: Thank you, Mr. Albright.

Senator Petris.

SENATOR PETRIS: Can you tell me the boundaries of

1 the South Coast? You live in Riverside. Does it go all the way
2 to the coast?

3 MR. ALBRIGHT: It actually goes all the way to
4 Arizona. The entire counties of Los Angeles, and Orange and
5 Riverside County are all in the District, the nondesert portion
6 of San Bernardino County. So, we go all the way from the coast
7 to the border of Arizona.

8 SENATOR PETRIS: Why are you being so tough on
9 manufacturers in L.A. County?

10 I've had a lot of letters saying they're going to
11 move out, to which I say: Go ahead! If you want to poison
12 people in Texas and Arizona, go ahead, poison them there. We
13 don't want you poisoning people in our state.

14 So, I'm glad you're doing it, but can you tell me
15 what the problem is?

16 MR. ALBRIGHT: You're probably answering your own
17 question.

18 The difficulty is what is assigned to the Air
19 District, in my opinion, versus what our authority is.

20 Since we really only have authority to regulate
21 stationary sources, which are primarily manufacturers, we're
22 limited in what we can do. Sixty-some percent of all emissions
23 come from mobile sources: automobiles, trucks, trains.

24 SENATOR PETRIS: Who does that?

25 MR. ALBRIGHT: That's primarily the federal
26 government and the State Air Resources Board.

27 While there are strict regulations to control them
28

1 also, our District only can control stationary sources, which
2 are primarily industry. And as a result, the rules that we pass
3 create a lot of controversy, and people are very -- object to
4 them.

5 SENATOR PETRIS: But the rules are enacted, I assume,
6 only after pretty thorough study and recognition of a very
7 difficult problem and hazard to the public health; isn't that
8 right?

9 MR. ALBRIGHT: That's right, Senator.

10 We go through an extensive rules procedure where
11 everybody has an ability to comment. There are full
12 environmental impact statements done, and all rules -- partially
13 at my direction, it's one of my biggest concerns being on the
14 Board -- we also do a complete socioeconomic analysis of all the
15 rules now.

16 And while I think we still have a ways to go into the
17 accuracy of those analyses, at least we're making a commitment
18 as a Board to look at not only the air quality impacts and the
19 health impacts, but the economic impacts: what are we really
20 doing to jobs, and people, and companies' investments.

21 SENATOR PETRIS: Is their objection mostly financial,
22 that the equipment they're required to use costs too much? What
23 is it? The letters don't spell it out; all they say is that
24 it's costly and too many regulations.

25 MR. ALBRIGHT: Their objections typically fall into
26 one of two areas: they're either this District Board is going
27 farther than it should with their specific industry, and that
28

1 they are unduly being attacked, so to speak; and secondly, it's
2 the timing.

3 Many companies will come in and say, "Fine. Regulate
4 us, but give us a couple extra years. If your rules are
5 technology forcing, we can perhaps do a better job if you give
6 us more time to do it."

7 I think we've been fairly lenient in that time
8 constraint. I think we could have been much more stricter than
9 we have, but it's --

10 SENATOR PETRIS: You're actually given them more
11 time?

12 MR. ALBRIGHT: In many instances. In fact, I could
13 identify a couple where we've given so much more time that the
14 State Air Resources Board has failed to accept it as part of the
15 state's implementation plan for cleaning up the air. In other
16 words, we've been too lenient.

17 SENATOR PETRIS: Thank you.

18 CHAIRMAN ROBERTI: Any other questions?
19 Is there any opposition in the audience?

20 SENATOR CRAVEN: Move Mr. Albright.

21 CHAIRMAN ROBERTI: Senator Craven moves
22 Mr. Albright's confirmation be recommended to the Floor.

23 I think the Board's doing a very good job under
24 difficult circumstances.

25 MR. ALBRIGHT: Thank you very much, Senator.

26 CHAIRMAN ROBERTI: Secretary, call the roll.

27 SECRETARY WEBB: Senator Beverly.
28

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is five to zero; confirmation is
11 recommended to the Floor.

12 [Thereupon this portion of the
13 Senate Rules Committee hearing
14 was terminated at approximately
15 2:10 P.M.]

16 --oo0oo--
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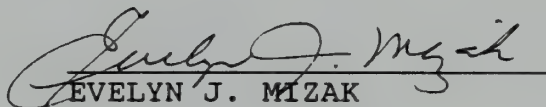
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 1991.


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SENATOR HENRY MELLO

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RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ARTHUR COSTAMAGNA, Commissioner
Workers' Compensation Appeals Board

JACK HENNING, Executive Secretary-Treasurer
California Labor Federation, AFL-CIO

GUS SKARAKIS, Counsel
Department of Consumer Affairs

FRANKLIN O. GRADY, Esq.
Santa Rosa

CHARLES LAWRENCE SWEZEY, Retired
Former Commissioner
Workers' Compensation Appeals Board

WILLIAM B. DONOHOE, Deputy
Workers' Compensation Appeals Board

MARVIN GLOW, Esq.
Former Commissioner
Workers' Compensation Appeals Board

RONALD FEENBERG, Esq., President
California Applicants Attorney Association

APPEARANCES (CONTINUED)

1
2 SENATOR QUENTIN KOPP

3 JERRY MATTHEWS, Lobbyist
4 California Firefighters Association
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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The Committee will come to order.

Before us this afternoon is the appointment of Mr. Arthur Costamagna, Commissioner of the Workers' Compensation Appeals Board.

Mr. Costamagna, you've appeared before us on more than one occasion, but we will ask you again why you feel you're qualified to assume this position, which you have held for a number of years periodically.

MR. COSTAMAGNA: May I read a brief statement?

CHAIRMAN ROBERTI: Yes, please.

MR. COSTAMAGNA: Thank you.

Senator Roberti and honorable Members of the Rules Committee, my name is Arthur Costamagna. I have previously appeared before this Committee, and my prior testimony is on record.

Several have spoken on my behalf, including former Commissioners Al Boardman and Lawrence Swezey.

Suffice it to say at this time that I now have 22 years of workers compensation experience, nine of those years as a member of the Workers' Compensation Appeals Board, from 1970 to 1979. I have now served a tenth year.

Since January of this year, I have been acting Chairman of the Board. During the past six months, as acting Chairman, I have carried a full assignment of cases and, in addition, have done all the Chairman's duties. No previous

1 Chairman or acting Chairman, to my knowledge, has ever done both
2 simultaneously, but I have had no choice.

3 The work at the Board is monumental, both with cases
4 pertaining to the old law and the implementation of the new law.
5 We are now only five Commissioners, there being two vacancies.
6 And for a while, there were only four of us due to the death of
7 the wife of one of our Commissioners, as well as his own
8 personal illness. We are pleased that he has now returned to
9 the Board full-time.

10 The next several years, the Workers' Compensation
11 Appeals Board will be very important to the future success of
12 the Workers Compensation system in the State of California.
13 Its impact on the economic well being of our state is well
14 understood, I'm sure, by all of you better than to me. In fact,
15 they will be crucial years.

16 I'm willing to devote my time and energies to a sound
17 and fair implementation of the law and decision of cases. I am
18 the most experienced and knowledgeable of the current members of
19 the Board.

20 The workers compensation system is a good judicial
21 system which takes a huge burden off of the civil courts and
22 expeditiously resolves disputes to the mutual benefit of injured
23 workers and employers, but as we all know, there are problems.
24 I'm willing to provide the Board with the benefit of my
25 knowledge and expertise at this crucial time in its history.

26 Therefore, I appear before you today, seeking your
27 consent to my appointment as a Commissioner of the Workers'
28

1 Compensation Appeals Board.

2 Thank you very much.

3 CHAIRMAN ROBERTI: Thank you very much,
4 Mr. Costamagna.

5 Do you have any witnesses in support?

6 MR. COSTAMAGNA: Yes, I do, sir.

7 CHAIRMAN ROBERTI: Please come forward, Mr. Jack
8 Henning.

9 MR. HENNING: Mr. Chairman, Members of the Committee,
10 Jack Henning, California Labor Federation.

11 I'm pleased to recommend the confirmation of
12 Mr. Costamagna.

13 Last year, in the closing months of the Deukmejian
14 administration, our organization opposed the confirmation of
15 Mr. Costamagna. I testified at that time that our basis had
16 nothing to do with any absence of merit or qualification. It
17 had to do simply with the fact that Governor Deukmejian would
18 never appoint a labor person to the Appeals Board. And we saw
19 -- we sought at that time to get him to appoint a labor person.

20 And so, it was understandable that we should make
21 this fight, because labor has had a representative on this Board
22 under its present title and under the title of the Industrial
23 Accident Commission going back at least to 1930.

24 This year, we went back over all of those who have
25 held office on that Board. And I can testify to some of the
26 names: James Roff was elected Governor in 1930. Tim Reardon, a
27 labor person from San Francisco, an activist in the labor
28

1 movement, and for a while his Director of Industrial Relations
2 was a member of the Board. So, we can cite the example of 60
3 years where we had representation, but Governor Deukmejian could
4 never understand our point of view. Hence, we opposed the
5 appointments, not simply of the gentleman before you, but of
6 the other appointees that were the death bed appointees, as it
7 were, of the Governor.

8 But we're in a new era with a new Governor. I prefer
9 to believe that, there are two openings mentioned, there's a
10 place for a nonlawyer. And we hope that this Governor will name
11 a labor person to one of the nonlawyer positions, and I have no
12 reason to believe that he will not.

13 To Mr. Costamagna, I've spoken to him in the interim
14 because I had had no personal contact with him previously as to
15 his philosophy. I know many of his associates and friends in
16 San Francisco who could give me an honest evaluation, and all of
17 them spoke significantly in his praise.

18 There's no reason why he would be hostile to the
19 plight of workers appearing, whose cases would appear before the
20 Board. His father was an immigrant. He was born in North Beach
21 -- Mr. Costamagna, before us now, was born in North Beach. His
22 father was a janitor. He doesn't come from a background of
23 plenty and wealth that might encourage him to look with some
24 disdain on the plight of workers. His origins are good in that
25 regard.

26 He's a man of integrity, and I'm convinced that the
27 worker's case appearing before that Board would be safe in his
28

1 judgment and in his action.

2 The Teamsters Union has also sent in the notice, the
3 state body, they favor his confirmation. I haven't had time to
4 do the kind of work I would have preferred in contacting other
5 unions, because our people have been fighting for their lives
6 up here as the devastating approaches to the budget are moving
7 through both Houses. But I know the State Building Trades would
8 also approve this confirmation.

9 I'm very pleased and I feel honored to make this
10 statement in his behalf.

11 CHAIRMAN ROBERTI: Thank you, Mr. Henning.

12 Are there any questions? Thank you very much.

13 Are there any others in support?

14 MR. SKARAKIS: Mr. Chairman, honorable Member of this
15 Committee, my name is Gus Skarakis. I have been Counsel to the
16 Department of Consumer Affairs since 1967.

17 It was at that time that I first was introduced to
18 Arthur Costamagna, who was then Chief Deputy of the Department
19 under its predecessor name, Professional and Vocational
20 Standards.

21 Almost from the beginning, I was impressed with
22 Mr. Costamagna's openness and candor, his very friendly
23 demeanor. He was a man who, no matter how busy, would always
24 take time to listen and to assist anyone who came to him.

25 He has impressed me with his honesty, his innate
26 sense of fairness, and his compassion for others. He is a
27 gentle man, quietly firm, and possessed in abundance, in my
28

1 opinion, with those principles which will serve him and the
2 people of this state well in the execution of his
3 responsibilities on the Workers' Compensation Appeals Board.

4 I want to thank you for this opportunity to speak. I
5 will keep my comments brief, but it's a distinct pleasure for me
6 to commend Mr. Costamagna to you for your consideration.

7 CHAIRMAN ROBERTI: Thank you very much.

8 Any questions? Hearing none, is there another
9 witness?

10 MR. GRADY: Senator Roberti, honorable Members of
11 this Committee, I'm appearing before you today because I believe
12 that Arthur Costamagna is eminently qualified to continue to
13 serve as a member of the Workers' Compensation Appeals Board.
14 And at this time of crisis in implementing the new reform
15 legislation, it is essential that the Board continue to benefit
16 from his expertise and experience.

17 I believe that my experience in the field of workers
18 compensation puts me in the position to know of Mr. Costamagna's
19 qualifications to serve on the Appeals Board. Beginning in
20 1957, I practiced law first as a defense attorney, and then as
21 an applicant's attorney, until my appointment as a referee in
22 San Francisco in 1966. Until my retirement from state service
23 in 1985, I had served as a referee, Deputy Commissioner,
24 Executive Secretary of the State Workers Compensation Advisory
25 Committee, Administrative Director and Commissioner. Since
26 retirement in 1985, I have continue to work part-time in workers
27 compensation.
28

1 I first became acquainted with Arthur's work when I
2 became deputy Commissioner and Secretary of the Board early in
3 1971. I was impressed with his diligence and desire to learn
4 all he could about workers compensation law. While I did not
5 agree with all of his decisions, and would often discuss them
6 with him when we would be on the same panel in a case, I found
7 him always ready to listen to my point of view.

8 His final decisions were never based on any kind of
9 prejudice.

10 After I was appointed Administrative Director by
11 Governor Brown in 1975, my office was adjacent to Arthur's, and
12 we spent many nights when we were working late discussing the
13 crisis in workers compensation. He always had an interest in
14 improving the system so that it would better serve the injured
15 worker. I never discerned any prejudice on his part. Arthur
16 always wanted to be fair.

17 I understand that Mr. Costamagna has been attacked
18 for his role in the adoption of recent Board rules regarding the
19 screening of applications and venue in Southern California.
20 Both of these issues are presently before the Appellate Courts,
21 which is where they belong.

22 As far as screening is concerned, I believe that it's
23 essential to the efficient operation of the Appeals Board.
24 Without it, both sides will be able to gain an unfair advantage
25 on the other by premature filing of applications. Under the new
26 law, many more applications will be filed by defendants than
27 before. And without screening, workers will be forced to trial
28

1 before they are ready.

2 I have also read new Labor Code Sections 5501.5 and
3 .6 dealing with venue and do not find them so clear as not to
4 require court interpretation.

5 As Administrative Director, I appointed 40-50
6 Workers' Compensation judges. Many of those had represented
7 insurers and self-insured employers. I did not find that those
8 necessarily did not make them -- allow them to make fair
9 decisions. It was an individual matter.

10 My knowledge of Mr. Costamagna's work makes me
11 completely confident that he will continue to do his best to
12 decide all cases in a fair and equitable manner.

13 For the foregoing reasons, I request that you confirm
14 Mr. Costamagna as a member of the Workers' Compensation Appeals
15 Board.

16 Thank you.

17 CHAIRMAN ROBERTI: Thank you very much.

18 Are there any questions? Thank you very much.

19 Next witness, please.

20 MR. SWEZEY: I'm Charles Lawrence Swezey, a retired
21 member of the Workers' Compensation Appeals Board. I've been
22 before you several times before, including one of
23 Mr. Costamagna's hearings. I was appointed by three governors,
24 so I had the opportunity to see you several times.

25 I'm also author of the Third Edition of the
26 California Workers' Compensation Law.
27
28

1 I've known Arthur Costamagna since he was first
2 appointed to the Board in 1971 -- 1970, beg your pardon. I was
3 either a member of the Board or its Secretary during this entire
4 period, and I'm intimately familiar with his performance. He
5 was extreme conscientious in reviewing the cases to which he was
6 assigned and wholly fair in his decisions. I think that's borne
7 out by practically everybody that was on the Board at that time.

8 You'll remember that Commissioner Boardman, the labor
9 member, testified before you at Mr. Costamagna's first hearing,
10 and I think you have a letter in your file from Judge Picard,
11 Florence Picard.

12 Yesterday, I talked to another member of the Board,
13 and his memory was much the same as mine.

14 At the present time, he's the only lawyer member of
15 the Board with experience in the field. And I think refusal to
16 confirm him will leave the Board without experienced guidance
17 for an indefinite period.

18 I also think that if you question any of the Northern
19 California applicant's attorneys who dealt with Commissioner
20 Costamagna when he was a defense attorney, you will find he had
21 a reputation for agreeing to settlements which were very fair to
22 the injured worker.

23 Now, with regard to the rules which the WCAB adopted
24 and the cases which it has decided to implement the
25 Margolin-Bill Greene Reform Act, I think you'll agree that these
26 are matters for the court, and the Board was very prompt in
27 getting them before the court. I don't think we can resolve
28

1 them this afternoon because they're too complex.

2 Finally, if Commissioner Costamagna isn't confirmed,
3 the WCAB will be left with no member experienced in workers
4 compensation except one lay member, who has announced his
5 retirement. This will place just an impossible burden on the
6 civil service staff, which has already been told that it's going
7 to have to cut back 30 percent.

8 Now, if the Margolin-Bill Greene Reform Act is to
9 have any chance of success, the WCAB, the Division of Workers'
10 Compensation, and the Industrial Medical Council must be fully
11 staffed with competent and experienced people.

12 Thank you, Mr. Chairman, for giving me the
13 opportunity to express my thoughts on this appointment and also
14 on the present condition of the workers compensation system.

15 CHAIRMAN ROBERTI: Thank you very much, Mr. Swezey.

16 Is there any question? Hearing none, thank you.

17 Is there anyone else? Please come forward.

18 MR. DONOHOE: Senator Roberti, honorable Members of
19 this Committee, my name is William B. Donohoe, and I am a Deputy
20 Commissioner of the Workers' Compensation Appeals Board, and I
21 serve in the San Francisco office with Mr. Costamagna and the
22 other Commissioners.

23 And in that position, I've had an excellent chance to
24 really observe how Commissioner Costamagna handles his cases
25 because I serve on the panels with him. Not that I want to
26 serve on the panels, but there's such a shortage of
27 Commissioners that the deputies are all forced into service to
28

1 do that.

2 I have to give you a little bit more of my
3 background. Before I became a Deputy Commissioner, I was a
4 Workers' Compensation Judge for a short time, and before that,
5 for 19 years, I was an attorney in private practice representing
6 injured workers in this state.

7 And I might add that I also was a member of the
8 California Applicants Attorneys Association from its beginning
9 in the San Francisco area up until the time I became a Workers'
10 Compensation Judge, and of course, I had to retire from that at
11 that time.

12 I first met Arthur Costamagna shortly after he was
13 appointed a Commissioner in 1970. I really didn't know him very
14 well in those days because I was out in practice. The only time
15 that I really had a chance to see what he was doing was when I
16 would file a petition for recon., or somebody in the office
17 would do that, and he might be on the panel, and then we'd
18 receive the opinion from the Board.

19 I did get to know him better when I went to work at
20 the Board in 1978, and I was there for about a year, a little
21 over a year, when he was finishing up his earlier stint.

22 Over the years, after he left the Board and was
23 serving as an attorney representing an insurance company, I had
24 occasion to see some of his work come through, and I also had
25 occasion to speak with a lot of the applicants attorneys in the
26 northern part of the state that I have known over the years.
27 And I really -- I can honestly say that not one of them felt
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1 that Arthur Costamagna was not qualified for this position.
2 They felt he was very fair, even-handed, and that in all their
3 dealings with him, he made life easy for them.

4 So, I know there are some attorneys here today who
5 may be testifying, but if they're not familiar with his work in
6 the north while he was here, I think that should be weighed when
7 they do appear before this Committee.

8 In my work as a Deputy Commissioner, my primary
9 assignment is to be the appellant attorney. I represent the
10 Board in the cases in the Courts of Appeal throughout the state
11 and before the Supreme Court. So, I'm very familiar with the
12 opinions that have been coming down from the courts and the
13 panels that have served on them at the Board.

14 I had occasion yesterday, spending about four hours
15 in the office, to go over the opinions that have come down for
16 the last year. There are about 46 of those opinions. And the
17 reason I picked the last year, that is the last year that Arthur
18 Costamagna has been back on the Board. And he wasn't a panelist
19 in any of those opinions. There are a few grants that are
20 pending before the court, and I don't believe it's timely to
21 speak about those, and I think he was on one or two of those.
22 But all of these opinions that came down and the grants even,
23 they're of a mixed bag. Some are for the injured worker, and
24 some are against the injured worker. I don't have any
25 statistics on that.

26 But often on the times that I serve on panel with
27 Arthur Costamagna at this time, I run into cases that I feel
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1 that it would be good if we could find in favor of the injured
2 worker, but there's sometimes some difficult statute limitations
3 problems and other things, other statutory bars, and some real
4 tight factual cases. But I've always found that Arthur
5 Costamagna has gone out of his way, he is most compassionate, in
6 making sure that these injured workers have their day in court.
7 And he just is very careful that anything that can be done, even
8 embracing the equitable powers of the Board, be done so that no
9 one is short-changed before this Board.

10 I agree with the testimony of the earlier persons
11 that spoke before you, and on behalf of Mr. Costamagna, I really
12 urge this Committee to consider that he should confirmed.

13 I don't want to take anything away from the other
14 members of the Board, but I have to be candid and say that
15 Arthur Costamagna in experience, and I would even say
16 temperament, and knowledge of the law, is heads and shoulders
17 above them. And it would be a terrible loss of this field, the
18 workers' compensation, if he were deprived -- or the state were
19 deprived of his services.

20 I urge his confirmation. Thank you.

21 CHAIRMAN ROBERTI: Thank you very much.

22 Is there any other witness in support? Is there
23 anyone in opposition?

24 MR. GLOW: Chairman Roberti and honorable Members of
25 this Committee, my name is Marvin Glow.

26 It is with extreme distaste and discomfort that I
27 appear here to testify in opposition to Commissioner
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1 Costamagna's confirmation. I served with Commissioner
2 Costamagna from 1975 until Commissioner Costamagna left in 1979.
3 I was a Brown appointee to that Board in August of 1975.

4 I found Commissioner Costamagna to be a gentleman in
5 the highest sense of the word, and that's why I have discomfort
6 in testifying against him.

7 Unfortunately, I also found Commissioner Costamagna
8 to interpret the law and the facts in workers' compensation
9 cases contrary to the position of the industrial injured worker.
10 And it is for that reason that I am opposing his confirmation.

11 When he was reappointed to the Board by Governor
12 Deukmejian, his first opportunity to deal with the Greene-
13 Margolin Act resulted in a decision, which is currently pending
14 before the Appellate Courts, but which resulted in an
15 interpretation of the law that worked against the best interests
16 of the industrially injured worker. It was a decision that
17 ignored the mandate of Labor Code Section 3202 to liberally
18 construe the law in the favor of the industrially injured
19 worker, and it confirmed my feelings with reference to
20 Commissioner Costamagna being confirmed by this body.

21 The very things that some of the witnesses who
22 testified in favor of his confirmation, about his years and
23 years of experience, are the things that frighten me the most.
24 And I say that because the Governor has appointed a number of
25 people who are not familiar with the workers' compensation law,
26 and the person that they're going to be looking to is the one
27 with the institutional memory, which would be Commissioner
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1 Costamagna. The witnesses who testified in favor of
2 Commissioner Costamagna pointed out the disaster that would
3 happen if that institutional memory wasn't there, but that can
4 be solved very simply. The Governor has two existing
5 appointments; he's going to have a third appointment when a lay
6 person, Commissioner Sullivan, retires next month. And if
7 Commissioner Costamagna is not confirmed, he will have a fourth
8 appointment, and there's certainly a lot of people out there who
9 are more concerned with the interests of the industrially
10 injured worker who can be appointed, and appointed immediately
11 and start serving immediately, who are equally experienced and
12 equally knowledgeable in the field of workers' compensation law.

13 And I exclude myself from that, because I'm now
14 retired, or semi-retired.

15 So, I strongly urge that the Committee not confirm
16 Commissioner Costamagna.

17 CHAIRMAN ROBERTI: Thank you very much.

18 Is there anyone else?

19 MR. FEENBERG: Senator Roberti and other Senators of
20 the Senate Rules Committee, my name is Ron Feenberg. I am the
21 President of the California Applicants Attorneys Association,
22 and I am an applicants attorney in the Los Angeles area for the
23 past 20 years.

24 Our organization is extremely concerned about the
25 balance that is and has been on the Appeals Board for the last
26 number of years. As Jack Henning told you, in this state, up
27 until Governor Deukmejian took office, there had been some
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1 balance on the Appeals Board at all times for 60 years. For
2 eight years under Governor Deukmejian, there was no interest
3 represented on the Appeals Board from the standpoint of the
4 industrially injured worker, from labor, from the applicant
5 attorneys' bar. Never in the history of this state had that
6 ever occurred before.

7 Six months have now passed, and Governor Wilson has
8 done nothing to change that balance. In fact, Governor Wilson
9 has done nothing to fill the two currently available spots on
10 the Appeals Board. For 8-1/2 years, our organization has been
11 concerned about that balance, remains concerned about that
12 balance.

13 As Mr. Glow described to you, the philosophical
14 interests of Mr. Costamagna are such that we remain extremely
15 concerned. Mr. Costamagna returned to the Appeals Board after
16 serving as a high ranking representative of a major insurance
17 company, workers' compensation insurance company, in this state.

18 What has happened during the past year with
19 Mr. Costamagna on the Board, and during the past 6-1/2 months
20 where he's been the acting Chairman, with regard to the
21 implementation, interpretation of the Margolin-Greene 1989
22 Workers' Compensation Reform bill?

23 On December 3rd in San Francisco, approximately 20
24 interest groups, all involved in the workers' compensation
25 industry and the workers' compensation community, gathered to
26 testify before the Appeals Board on what were then proposed
27 rules and regulations which the Board was preparing for adoption
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1 to begin the implementation and the interpretation of the
2 Margolin-Greene bill.

3 I testified at that committee session, as did 19
4 other groups. In many regards, we were unanimous in our
5 comments to the Appeals Board on certain issues. Not
6 withstanding the unanimity of the interest groups, including the
7 Californians for Compensation Reform, who are not -- rarely
8 aligned with the California Applicants Attorneys Association, I
9 think we all recognize, the Appeals Board went ahead and adopted
10 certain rules and procedures which were clearly contrary to the
11 statute enacted by this Legislature.

12 As a result of that, the California Applicants
13 Attorneys Association had to file a lawsuit against the Workers'
14 Compensation Appeals Board. The lawsuit challenged the
15 utilization of certain rules and regulations which we felt were
16 contrary to the statute of this body.

17 I think it would be inappropriate for me to get into
18 the merits of that lawsuit since it is pending, but I think it's
19 important for you to know that in some regards, the Court of
20 Appeal has already granted the extraordinary relief of a stay
21 order, staying the Appeals Board's rule, because they found that
22 it was doing irreparable harm at the time. And pending further
23 review of the issue, the stay order did in fact issue.

24 Lastly, I want you to know that I come here today,
25 after spending four days at our semiannual convention in
26 Northern California. At that convention, both at my Board of
27 Governors meeting and at my general business meeting, I made
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1 public, as did our Board, the fact that we would be appearing
2 today before you, and that our inclination was then to oppose
3 Arthur Costamagna. The convention was made up of applicant
4 attorneys from throughout the state, many from Northern
5 California because the convention happened to be in Northern
6 California. We asked for their input.

7 I represent to you that not one applicant attorney
8 stepped forth and encouraged me or our Board to not oppose
9 Arthur Costamagna. They are not here today, either. Where are
10 those applicant attorneys to which they earlier referred who
11 were supportive of Mr. Costamagna?

12 Thank you.

13 CHAIRMAN ROBERTI: Thank you.

14 Any questions? Is there anyone else here in
15 opposition?

16 Mr. Costamagna, you may conclude.

17 MR. COSTAMAGNA: Senator Roberti, I would more than
18 welcome any questions from any of you.

19 CHAIRMAN ROBERTI: You might address the point which
20 one of the witnesses in opposition raised on the recent
21 interpretation of the Greene-Margolin Act.

22 MR. COSTAMAGNA: Yes.

23 I think that Mr. Glow was referring to a case known
24 as Jimenez, and that is the case of Raul Jimenez vs. Langendorf
25 Bakeries. This case is purely a matter of statutory
26 interpretation. Since the case is now pending before the Court
27 of Appeal, I feel constrained about discussing a matter before
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1 the courts upon issues I may be later called to address once
2 again should the court remand this matter to us.

3 However, for this Committee's review, I have brought
4 a copy of the en bank decision, along with all of the amicus
5 briefs that were filed with the Board before we made our
6 decision. They were reviewed by the entire Board, and I might
7 mention that that decision was made -- talking about it
8 procedurally, not substantively, because I do not feel I should
9 get into that -- but that decision was made by all seven members
10 of the Board. Unfortunately, two of the members were appointed
11 to the bench the very week before the decision was signed. It
12 was an unanimous decision of the Board. It had to do with
13 interpretation of the statute.

14 I would be pleased to present to the Committee the
15 entire file. I know under the shortness of time that I doubt
16 that you would have time to review it today, but those are the
17 documents that -- some of the documents -- that we relied on,
18 the amicus briefs particularly, in coming to this decision.

19 I would prefer not to discuss it any further because
20 it is now before the Court of Appeal.

21 CHAIRMAN ROBERTI: Thank you.

22 There's a tremendous backlog before the Workers'
23 Compensation Appeals Board. How do you account for that, and
24 what have you done to try to ameliorate it?

25 MR. COSTAMAGNA: I think when you speak of the
26 backlog before the Board, when a petition for reconsideration
27 comes to the Board -- in fact, may I divert for a moment -- I've
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1 brought with me a typical file that comes before the Board every
2 day. There are 8-10 of these files, and that's about average
3 size, although some get this big, as former Commissioners can
4 tell you; some are smaller. Eight to ten cases like this come
5 before the Board every day, before each Commissioner every day.

6 In that file is what is known as the legal file, and
7 this file is the evidence that a Workers' Compensation judge has
8 reviewed. There are minutes of hearings. There may be
9 depositions; there may be testimony given at a hearing. There
10 is then what is known as a findings and award, made by the
11 Workers' Compensation Appeals Board judge, the trial judge. He
12 then files his opinion on decision.

13 If the parties are content with the decision on both
14 sides, that is -- it becomes final. But when one of the parties
15 feels aggrieved, they then file a petition for reconsideration.
16 And that's when it comes to the Board.

17 Now, there's only two things the Board can do:
18 either deny the petition or grant the petition. And the
19 petition could be filed by either side, and sometimes even a
20 lien claimant, another party to the case.

21 A petition for reconsideration is usually followed by
22 an answer, and the Workers' Compensation judge then files his
23 report.

24 This is a long way to your answer, but I appreciate
25 the time, Senator Roberti.

26 The Board will either grant or deny. Most of the
27 decisions, most of the petitions that come before the Board, are
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1 denied. I would venture to guess that it's probably 75% of the
2 petitions. And that's been my experience regardless of
3 administration. I served in the Reagan administration, Brown
4 administration, part of the Deukmejian administration, and the
5 current months. In most instances, the cases are denied and the
6 work of the judge is affirmed.

7 But there are grants, and that's where the backlog
8 comes in. We are currently -- have approximately 200 petitions
9 that are known as grants. When we grant a petition, anything
10 can develop in that case. We may grant it for additional
11 testimony; we may grant it for additional medical evidence; we
12 may grant it because it needs legal study, and it's a case that
13 is of new impression, and therefore would demand greater
14 attention.

15 Years ago when I was on the Board, there was a
16 backlog of 600-700 grants, and I think former Commissioners
17 Swezey and Grady, both who were Secretaries to the Board at that
18 time, can confirm that.

19 That is no apology for our current backlog, but I
20 just reviewed those statistics with Richard Yonkin last week,
21 and my understanding from him is that we approximately have 200
22 cases that have been granted and pending, and we are working
23 expeditiously to resolve those cases.

24 One of the problems that has created this backlog in
25 the last year -- it has not -- the backlog has not grown, but
26 has caused us difficulty in reducing it significantly -- is the
27 fact that there have been so many changes on the Board. A year
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1 ago, I replaced Commissioner Jane O'Niel. In December -- in
2 January, pardon me, we lost Commissioners Little and Livermore.
3 There have been three Commissioners that left the Board in the
4 last 12 months.

5 The cases that they decided and granted had to all be
6 reassigned and redecided in many instances. That causes further
7 delay. And I can't tell you how many of those cases I have
8 personally reassigned to myself. I inherited all of what is
9 known as the grants from Commissioner Jane O'Niel, but I also
10 took on the cases, many cases, from Commissioner Livermore and
11 Commissioner Little. But still, we do have a backlog of 200
12 cases, which historically is not that bad, Senator Roberti.

13 I've gone a long way about this, but I thought it
14 might be good to give you some background of how we get cases
15 backlogged.

16 CHAIRMAN ROBERTI: Are there other questions?
17 Senator Petris.

18 SENATOR PETRIS: I just have a couple.

19 At one of the prior meetings on your confirmation,
20 one of the witnesses pointed out that there was a pattern that
21 had developed over a period of time where the judgment at the
22 trial level was in favor of the worker, and it was reversed by
23 the appellate group, your group, many, many times, which
24 reversal in return was reversed by the District Court of Appeal.
25 and he testified that that became the regular pattern; you could
26 just predict it. The worker gets bounced out at the lower level
27 -- excuse me. The worker gets a favorable ruling at the lower
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1 level; gets reversed by the Workers' Compensation Appeals Board,
2 and then he's rescued at the higher level.

3 I don't know what's happened in the last few months
4 on that, and I don't know what the percentages are. But the
5 witness seemed to indicate that whatever they were, there were
6 far too many.

7 Do you have any information or comment on that?

8 MR. COSTAMAGNA: Yes, I'm glad you've asked that
9 question of me, Senator Petris, because here are the appellate
10 decisions of 45 cases in which the Appeals Board was reversed in
11 the last year. The first opinion is dated here June 25th, 1990,
12 and the last is June 21st, 1991.

13 In the period of time, the Appeals Board has reviewed
14 approximately 4,000 petitions for reconsideration. I myself
15 have been on almost 2,000 cases in the past year. Forty-six
16 decisions from the Court of Appeal, that is less than 1%. That
17 is approximately 1% of the total decisions made by this Board.

18 And not all these are reverses. As Deputy
19 Commissioner Donohoe pointed out, some of these cases, the Board
20 is affirmed. Some of these cases, the Board found in favor of
21 the injured worker and the court reversed the Board and found
22 for the employer.

23 I have spent a good part of the last couple of days
24 re-reading every one of these decisions, and there is no general
25 rule that you can come away with from reading these that this
26 particular Board has been reversed over and over again by
27 reversing Workers' Compensation judges. There have been, as I
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1 say, some grants. There have been some court granted petitions,
2 and then reaffirmed the Board's position, even where they have
3 granted the original petition for reconsideration contrary to
4 the judge's finding.

5 I might also like to point out that I was not on any
6 one of these cases; although, for the first six months, it's
7 unlikely that I would be, because I had only served for six
8 months. But the last six months, by then some of my decisions,
9 you would presume, would be up at the Appellate Courts. I can
10 say to you today, I have yet to be reversed in this year that I
11 personally have been on this Board once again. I'm sure that's
12 not going to last long because you cannot make 2,000 decisions
13 in a period of a year and not be reversed.

14 But again, when you think of the tremendous number of
15 cases that we have out there, hundreds of thousands of
16 industrial injuries in this state every year, and you reduce it
17 down to -- and we have 150 judges now -- and you reduce it down
18 to 4-5,000 that come before the Appeals Board on
19 reconsideration, and in one year, only 46 or 45 went before the
20 Court of Appeal, that takes a tremendous load off the civil
21 courts, to begin with. And that's what's great about the
22 workers' compensation system, and that's why I wanted to come
23 back to the Board, because I think that this is a great system,
24 and it is an important system for the injured worker, because it
25 does expeditiously, although some cases do go on too long,
26 expeditiously resolve cases.

27 But to see the amount of work that goes through that
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1 Board everyday, and that is all that went to the Appellate
2 Courts for a period of a year, I don't know, but that to me is
3 quite impressive.

4 SENATOR PETRIS: Well, I don't think this has
5 anything to do with your confirmation, but we're getting an
6 awful lot of static that says the whole system's breaking down.
7 The workers tell us it takes a long time before a case is
8 resolved. The employers tell us they're leaving California
9 because of workers' comp.

10 Can't all of them be true, but that's got nothing to
11 do with your role in it, I recognize that. But we're getting
12 mixed signals as to how great the system is.

13 MR. COSTAMAGNA: Senator Petris, that's what I meant
14 in my opening remarks, that this -- the next few years are going
15 to be very important in this field known as workers'
16 compensation.

17 I well realize the impact that decisions of the Board
18 have, both to injured workers and employers. I'm well aware of
19 the fact that there are employers leaving this state because the
20 cost of insurance coverage is a result of these decisions.

21 But we cannot -- ours is a judicial role. We decide
22 case by case. It's all we do. And I know the impact that a
23 multitude of cases can have over a period of time, but when I
24 review a case, all I have before me is the four square corners
25 of this file. And I have to decide it based on the evidence in
26 that file and nothing else.

27 I'm aware of those problems. I have some personal
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1 ideas and solutions, but in terms of deciding a case, I cannot
2 worry about that impact, in a sense, that it may have on an
3 employer, because I can only go on the record.

4 SENATOR PETRIS: Well, Mr. Chairman, this would be an
5 opportune moment for me to respectfully call the attention of
6 our Members to SB 36, which provides health care for everybody
7 and will reduce this load. There will be no more scraps between
8 the employer and the company as to whether he's going to have a
9 certain doctor treat him or not. Everybody's free to choose his
10 own doctor, regardless of the nature of the injury.

11 I think we ought to revisit SB 36, which is still
12 alive, and had a unanimous vote out of the Health Committee, and
13 is now pending before another committee. Including Senator
14 Mello's vote, I might add.

15 Thank you.

16 CHAIRMAN ROBERTI: Any other questions? Senator
17 Mello.

18 SENATOR MELLO: Mr. Chairman.

19 Senator Roberti asked you about the backlog there,
20 and you said we're down to some 200 cases from before.

21 How long does it take an injured worker to get to a
22 hearing?

23 MR. COSTAMAGNA: Well, now, you're asking me a
24 question -- there's the old law and the new law.

25 SENATOR MELLO: Well, I'm asking you, you know, I'm
26 one of the nonattorneys here. I'm asking you a question because
27 I get complaints in my office about how long it takes to get
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1 your case before the Workers' Compensation Board now.

2 MR. COSTAMAGNA: My understanding, Senator Mello, is
3 that the average case is resolved, the average case --

4 SENATOR MELLO: I'm not talking about average. How
5 long would an extreme case take? Give me the range, then.

6 MR. COSTAMAGNA: An average case from date of injury,
7 to my understanding, takes approximately between 18 and 24
8 months.

9 And I agree with you, that is probably too long.

10 SENATOR MELLO: Some take a year, and there are some
11 that are up, what, four to seven years?

12 MR. COSTAMAGNA: I have seen cases, yes, sir, that
13 are on reconsideration that are five, six, seven years old, yes.
14 Those were extreme cases.

15 You have many cases where people are on temporary
16 disability for five years.

17 SENATOR MELLO: So, when you used the term
18 expeditiously a few moments ago, what were you referring to?

19 MR. COSTAMAGNA: I don't --

20 SENATOR MELLO: In the processing of these cases.

21 MR. COSTAMAGNA: Well, it's a constitutional mandate
22 that we handle cases expeditiously.

23 SENATOR MELLO: I'm asking you, you said we're now
24 handling them expeditiously, which means, in my interpretation,
25 expeditiously means that you're moving very quickly and
26 aggressively in processing these cases.

27 MR. COSTAMAGNA: Well, cases that are handled at the
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1 trial level are different from handling at the Board.

2 When a petition for reconsideration is filed with the
3 Board, we have only 30 days, plus one extension of 30 days, to
4 decide whether to deny or grant that petition. So, we only have
5 60 days to make decisions.

6 SENATOR MELLO: From my perspective, I get calls in
7 my district office from people that are injured, and they ask of
8 me, how do they get their claim, because their house is being
9 attached, the bill collectors are after them.

10 And when you say average is 18-24 months, with the
11 range up to maybe 4-7 years, what do the people do in the
12 meantime when those vultures are out there trying to wipe them
13 out?

14 MR. COSTAMAGNA: Well, those are some of the problems
15 we face. I agree with you, Senator.

16 SENATOR MELLO: I don't see anybody either on the
17 Board or the administration, at least for the last ten years,
18 that are really trying to change that.

19 Now, let me ask you another question.

20 MR. COSTAMAGNA: The new law should address that.

21 SENATOR MELLO: You talked about the new law last
22 year, and that was not sponsored by the Board. It was sponsored
23 by Members of the Legislature.

24 Mail. I've been in some of these offices, and I was
25 just shocked to see how the mail is put in the boxes, and it's
26 stacked up. They had a measurement a few years ago about how
27 many feet of mail they had unopened and stacked in these boxes.

1 The last count I had was some 300-400 feet high in all of the
2 regional offices.

3 Is that still the case?

4 MR. COSTAMAGNA: Senator Mello, I think there are
5 some offices that probably do have a mail problem. One of them
6 is the Los Angeles office. My understanding is that, with the
7 opening of the Anaheim office, that that is going to help,
8 because they've taken half the cases out of Los Angeles and put
9 them in Anaheim.

10 But that's -- and I'm not shirking our duty to this
11 to know something about this, but that's the obligation of the
12 Administrative Director.

13 But I have looked into the situation in the Salinas
14 Board --

15 SENATOR MELLO: No, that's in my district. I know
16 about Salinas.

17 MR. COSTAMAGNA: -- and I have a letter here that --

18 SENATOR MELLO: Thanks to me and a few others, we've
19 changed that around in Salinas.

20 MR. COSTAMAGNA: That's right.

21 SENATOR MELLO: But I'm talking about the statewide
22 problem of --

23 MR. COSTAMAGNA: There are good offices and there are
24 bad offices.

25 SENATOR MELLO: Let me ask you another question. Is
26 it true that judges are going in, when your file comes up, that
27 judges, because of the mail not being orderly filed or in the
28

1 proper place, you have to go through these boxes and look for
2 doctor's reports and other parts of the file?

3 MR. COSTAMAGNA: Yes, I have heard those stories.
4 I've heard Declarations of Readiness were filed and not reached
5 the file.

6 We get cases on appeal where lien claimants have
7 filed documents for payment of their liens, and unfortunately,
8 those liens have not reached the file. Decisions are made by
9 the trial judge, and then it's discovered that a lien has been
10 filed. The lien claimant must file a petition for
11 reconsideration, and it becomes another appellate case, which is
12 unfortunate, and that's true. The mail has not reached the
13 file.

14 SENATOR MELLO: Do you blame that on the Director of
15 the Department of Industrial Relations?

16 MR. COSTAMAGNA: I don't put the blame on anyone.
17 I'm saying it's the responsibility of the Administrative
18 Director. They have responsibility for the administration of
19 all of the offices throughout the state.

20 The Board has judicial powers. The Administrative
21 Director has the administrative powers. He has the appointing
22 power of the judges, the Workers' Compensation judges. The
23 Board transfers its judicial powers to the judge.

24 But for administration purposes, the trial judge is
25 responsible to the Administrative Director.

26 So, the Administrative Director currently has 29
27 offices -- 28 offices, I believe, or 30, throughout the state.
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1 Between judges and referees, now, almost 200. It's a huge
2 operation, Senator Mello.

3 SENATOR MELLO: Let me ask you, over the years, and I
4 want to thank one of my colleagues, Senator Bill Greene, the
5 Chair of the Industrial Relations Committee, who also had that
6 on the budget committee, they added, as testimony indicated the
7 need for more, administrative law judges and the support staff
8 to help get rid of this backlog.

9 But yet, as recently as, say, two years ago, there
10 were still 25 of these judge positions unfilled. They filled a
11 few more since then in terms of the pressures going on, but
12 there's still some vacancies there that they have not filled.

13 MR. COSTAMAGNA: Well, if there are any vacancies,
14 Senator Mello, I don't know about it. In the last six months, I
15 have personally been at swearing ins and have sworn in at least
16 50 new judges and over 40 referees. I trust those people are
17 working and attacking the backlog.

18 SENATOR MELLO: That's the last six months, but I'm
19 looking back over a longer span.

20 Thankfully, something is happening, but the backlog
21 is still there, and whether it's the Administrative Director's
22 fault, or the Board, or the Legislature, somebody ought to grab
23 this and try to -- I think our goal should be to help the
24 injured worker get their claim processed in an expeditious
25 manner, the way I interpret the word, and get it handled and
26 processed so that they can either become retrained or become
27 rehabilitated in some way so their lives can go on with their
28

1 families.

2 I mean, the fact that they're facing a life of
3 welfare in many cases is not a happy one, after losing all their
4 resources and everything, and that is exactly what's happening.

5 MR. COSTAMAGNA: I couldn't agree with you more. As
6 a defense attorney, when I was a defense attorney --

7 SENATOR MELLO: Mr. Costamagna, let me ask you about
8 your relationship, your past relationship was, according to the
9 background information, you were Vice President and Manager,
10 Trial Counsel, for the Orion Group, an insurance company which
11 underwrote workers' compensation insurance. Is that correct?

12 MR. COSTAMAGNA: That is absolutely correct.

13 SENATOR MELLO: And based on your 730 Form that you
14 filed with the Statement of Economic Interests, you do list
15 having had stock in the Orion Capital Group which was disposed
16 of in 1990, I guess, after you were appointed to the Workers'
17 Compensation Board, and worth a value, you indicated here on
18 this report. Signed by you on March 27th, 1991, you also filed
19 another one in 1990.

20 But this stock you had estimated to have a value of
21 over \$100,000.

22 MR. COSTAMAGNA: Yes, sir.

23 SENATOR MELLO: How much over \$100,000 was the value?

24 MR. COSTAMAGNA: The time I filed this first report,
25 I owned a total of approximately 5,000 shares. And it was
26 approximately \$25 a share at the time. So, I think that's
27 \$125,000.
28

1 I proceeded in the fall of last year to sell all of
2 the stock that I personally owned in August, and you see that on
3 my Financial Disclosure Statement. I might add that I put that
4 right up on top so no one would miss it in both reports.

5 And I now have -- I had sold approximately 2,000
6 shares in those sales, and I know have approximately 3,000
7 shares in a 401(k) retirement plan, a copy of which was supplied
8 to this Committee. I have no control over that 401(k) plan. It
9 is a trust. It's a retirement plan. I receive no dividends
10 from it, no income.

11 SENATOR MELLO: You do get interest on the stock that
12 builds toward your 401(k).

13 MR. COSTAMAGNA: Yes, after whatever dividends or
14 interest in the cash that's in that retirement fund is
15 reinvested or left in the fund quarterly.

16 I have disqualified myself, recused myself, in every
17 case involving EBI, which is the subsidiary of Orion, and
18 currently I have approximately 3,000 shares. And currently, the
19 value of that stock is under \$100,000.

20 I might add, the stock that I showed last year was --

21 SENATOR MELLO: Do you have any stock in an IRA?

22 MR. COSTAMAGNA: Yes. I had 200 shares in an IRA, in
23 my IRA, and 200 shares in my wife's IRA which has also been
24 sold.

25 SENATOR MELLO: That's in addition to the 401(k)?

26 MR. COSTAMAGNA: Yes, but they have been sold.

27 SENATOR MELLO: The IRA shares have been sold?
28

1 MR. COSTAMAGNA: Yes, Senator Mello.

2 SENATOR MELLO: But not the 401(k)?

3 MR. COSTAMAGNA: I have -- well, let me explain it
4 this way.

5 The 401(k) is a retirement fund, and I have not been
6 confirmed. And I think you can appreciate from my standpoint, I
7 didn't want to liquidate something until I had some assurance
8 that I was going to be a member of the Appeals Board.

9 SENATOR MELLO: Mr. Chairman, could we take a brief
10 recess? Two of my colleagues are missing, and in all fairness
11 to Mr. Costamagna, I think we ought to have a full board here to
12 hear all the questions and answers.

13 SENATOR CRAVEN: Very well. With no objection, let's
14 take a 10-minute recess.

15 [Thereupon a brief recess was taken.]

16 CHAIRMAN ROBERTI: We will reconvene.

17 SENATOR MELLO: Mr. Chairman, if I might just resume.
18 I don't know when Senator Petris and Senator Roberti had left,
19 but I want to go back and just go through some facts that I
20 asked Mr. Costamagna.

21 If I misrepresent this, I welcome your correcting
22 them.

23 But subsequent to the fact that he was a Vice
24 President and Manager, Trial Counsel, for Orion Insurance
25 Company, which does deal with workers' compensation insurance,
26 he indicated that he did have about 5,000 shares of stock in
27 this company which were sold, as indicated in his Statement of
28

1 Economic Interests, they were sold after he was appointed, from
2 August 4th, to August 24th, to August 31st, and October 4th, I
3 believe were the dates he listed there.

4 MR. COSTAMAGNA: Yes.

5 SENATOR MELLO: He indicated that he still has in a
6 401(k) retirement fund some 3,000 shares, valued at
7 approximately \$90,000, I guess, on current value. It's under
8 100,000, I think was the stipulation. And that he and his wife
9 each had shares in an IRA that have been sold.

10 Does that reflect what you and I had discussed as it
11 pertains to the value of your --

12 MR. COSTAMAGNA: Yes, yes. The only shares I
13 personally own --

14 SENATOR MELLO: Let me ask you a question. You said
15 the only stock that I personally own.

16 Let me ask you if other members of your family own
17 any stock, other than what you've disclosed here?

18 MR. COSTAMAGNA: No, sir, no.

19 SENATOR MELLO: Other than the 401(k)?

20 MR. COSTAMAGNA: The 401(k) is the only stock that I
21 have an interest in. and when I retire, I can have that
22 liquidated and take the cash. I don't necessarily have to take
23 the stock.

24 SENATOR MELLO: You seem to give the Committee the
25 impression that you were sort of tied to not having anything to
26 do, to say, about the 401(k) as it's in a trust and so forth.

27 Isn't it also true that a person such as yourself, or
28

1 anyone that's in a 401(k), you can redesignate that fund to
2 another company. If you go to withdraw it, then there's a
3 penalty involved because you have to go back and refigure your
4 income tax, and I think there's a prohibition against
5 withdrawing it unless you do it for retirement purposes.

6 But I'm sure you can redirect that if you wanted to
7 invest in 3M, or Bank of America stock, or Wells Fargo, or some
8 other. There's no prohibition as long as you don't touch the
9 capital that's in that stock.

10 MR. COSTAMAGNA: I really don't know the answer to
11 that. I've not looked into it.

12 SENATOR MELLO: I'm just saying that I think that the
13 impression you gave is that your hands are tied as far as making
14 any changes in that fund.

15 I'm just saying that, from my own knowledge, I think
16 if you're in a 401(k) fund, that the government allows you to
17 put money there and deduct it from money owed for taxes. You
18 can't redirect that to another earnings entity without penalty,
19 but you cannot withdraw until it's withdrawn under certain
20 circumstances.

21 MR. COSTAMAGNA: I don't the answer to that. I've
22 not looked into --

23 SENATOR MELLO: I'm just suggesting I think your
24 hands are not tied.

25 What I'm concerned about is the fact that I alleged
26 that there's a lot wrong with workers' comp. over the years.
27 I'm going back to my experience as being a Legislator since
28

1 1976. And I think it's further proven by the statements that
2 you made here today, there's a backlog; there's unopened mail.
3 There has been a great number of unfilled positions that
4 whoever's responsible, the Director or who, have left unfilled,
5 and that constitutes a real unjust delay for injured workers.
6 That's the point I'm making.

7 I looked over your statements. You have other
8 holdings which are fine and common. The only other one I see,
9 you do have some stock in the Bally Corporation that has casinos
10 and gambling, and that's an investment.

11 You don't see any conflict?

12 MR. COSTAMAGNA: They don't do business in
13 California.

14 SENATOR MELLO: Bally doesn't?

15 MR. COSTAMAGNA: Not with their --

16 SENATOR MELLO: Well, the point is, they're doing
17 business.

18 That brings up a point. What if Orion Corporation
19 didn't do business in California. Do you feel you would have a
20 conflict if you maintained the 5,000 shares that you once held
21 in that company if they were strictly another state entity?

22 MR. COSTAMAGNA: No, but I disqualify myself from any
23 case pertaining to Employee Benefits Insurance Company, which is
24 a subsidiary of Orion.

25 And I have a statement for the Committee from Dennis
26 Hannigan attesting to my recusing myself in any case which
27 involved Employee Benefits Insurance Company, which is a
28

1 subsidiary of Orion.

2 But as to the extent of the business that Orion does
3 in California, I also have for each of you, if I may, a copy of
4 a report, research report, from California Workers' Compensation
5 Institute, listing all of the insurance companies that do
6 workers' compensation business in this state. And Orion Group
7 is 17th, and in 1989, it did a total of \$99 million in insurance
8 premiums in this state, which is only 1.3% of -- it's number 17
9 on that list. It's only 1.3%. It's a very small company in
10 terms of actual underwritings in the State of California.

11 So I think --

12 SENATOR MELLO: On that point, you minimize the 1%.
13 If a person owned 1% of PG&E, you'd have an awful lot of stock.
14 But, I mean, the fact is, if you have, in my opinion -- this is
15 my own personal opinion -- if you have just a single dollar
16 invested in a company that you're going to have a chance to gain
17 from that investment, then you sit as judge and jury of matters
18 that come before you in your official capacity that has a chance
19 to enhance that company, no matter how big or how little, to me
20 that poses maybe not a legal conflict, but certainly a moral
21 conflict as far as making decisions that maybe, on a close call,
22 you might opt towards that company rather than against them.

23 SENATOR CRAVEN: Oh, Henry, come on.

24 SENATOR MELLO: Senator Craven.

25 I mean, do I have the right, Mr. Chairman, to ask
26 questions here?

27 SENATOR CRAVEN: I'll stipulate the right. The only
28

1 thing I question is the germaneness of what you're talking
2 about.

3 SENATOR MELLO: You don't think it's germane --

4 SENATOR CRAVEN: No, I don't think it's germane. You
5 get into the man's morals? You just mentioned morality.

6 SENATOR MELLO: No, no.

7 SENATOR CRAVEN: You said legally it was correct but
8 morally it may not be.

9 SENATOR MELLO: This gentleman has a high moral
10 standard. I'll certainly stipulate to that.

11 I'm just saying morally, if a person has to make a
12 decision, while not possibly a legal conflict, but if you have
13 to make a decision, a judgmental decision that enhances your own
14 investment --

15 SENATOR CRAVEN: Wherein does it do that?

16 SENATOR MELLO: Where does it do that?

17 SENATOR CRAVEN: Wherein does it do that?

18 SENATOR MELLO: All right. The gentleman just said
19 he has about 3,000 shares of stock in Orion EBI Company that
20 writes workers' compensation insurance. It's in a 401(k)(3) --

21 SENATOR CRAVEN: It's a trust account; isn't it?

22 SENATOR MELLO: All right, but if that stock goes up
23 in value, and interest earned, it enhances his own retirement at
24 some point, or his ability to withdraw that amount.

25 SENATOR CRAVEN: Well, I think maybe that's correct,
26 but I think, if anything, it's tenuous.

27 SENATOR MELLO: That's as basic as third grade. If
28

1 you have stock in any company --

2 SENATOR CRAVEN: Well, don't you vote on issues here
3 wherein you may be a stockholder in an oil company, that maybe
4 you will profit by something that favors them in a legislative
5 sense?

6 SENATOR MELLO: That's why I used the word
7 technically, because if you look at the law, if you have more
8 than 3% ownership in a company, that is a conflict of interest
9 that you have to withdraw from.

10 SENATOR CRAVEN: I'm presuming that he has less than
11 that.

12 SENATOR MELLO: He has far less.

13 SENATOR CRAVEN: If he had more than 3%, he probably
14 wouldn't be screwing around with this.

15 [Laughter.]

16 SENATOR MELLO: But in addition to him having -- but
17 also, it's not like owning some stock in PG&E as a bystander.
18 He is actively engaged in his present position, as Workers'
19 Compensation Board member, with making important decisions that
20 come up to him. I mean, that's the only point.

21 I'm just confirming what he stated on his report
22 here, and I just have one last point that I'll try to make.

23 That is, as you point out here, the premiums
24 collected in California amount to \$7.4 billion per year. That
25 was back a few years ago; that's back in 1989.

26 I have a pie chart that shows where that money goes,
27 and it's amazing. It's amazing. And I want to first qualify my
28

1 statement by saying I'm certainly not saying anything on defense
2 of any group, but I was shocked to see the biggest pie, the
3 biggest percentage of this money, goes to the insurance
4 companies. I mean, they're making a handsome profit for writing
5 workers' compensation insurance.

6 The ones that get bad-mouthed on this are the
7 doctors, the health providers, the applicants attorneys. And
8 with this pie chart, the applicants attorneys had about a 3% pie
9 of the total premiums because their categories are based on
10 partial injury, and permanent, total, and death benefits. They
11 don't get any amount on those benefits at all.

12 So, I guess my question to you is, isn't it correct
13 that the insurance companies collectively then average close to
14 30-35% on these premiums?

15 MR. COSTAMAGNA: My understanding is that the total
16 expense ratio of the average insurance company is approximately
17 30-35%; that's correct, Senator. And that's what it takes,
18 generally speaking, to operate an insurance company.

19 Their total loss ratio, however, exceeds 100% in most
20 instances. And if you looked at the current statistics of
21 insurance profitability in workers' comp., you will find it is
22 declining substantially.

23 SENATOR MELLO: My position is, personally I think
24 you're a person of -- Senator Craven, I think, just sort of made
25 a statement to me that I don't like for the time being, but I
26 give him the right to make it also, but from all the testimony,
27 you've been a person, in my opinion, of very high quality and
28

1 moral character, and you've done well in your community, and you
2 served on this Workers' Compensation Board.

3 But I think you've been there an awful long time,
4 going back to 1970, on and off since then, and I just think that
5 you've been there long enough to make some changes in the system
6 that I hope someday, some Governor or some Director of the
7 Department of Industrial Relations, or the Legislature itself,
8 because I get complaints from business who say we have the
9 highest premiums in the whole United States. I get complaints
10 from workers about how the system don't relate to their injury,
11 it takes so long to get their claim processed.

12 I'm wondering where the money is going. I think it's
13 not going to the injured worker, I can tell you that.

14 And it's really, we have a system in California that
15 costs a lot of money that doesn't really relate to the job that
16 it's intended to do. And I think that I'm going to be
17 supporting new faces when they come along with the hope that
18 they're going to go in there and try to straighten things out.

19 Thank you, Mr. Chairman.

20 CHAIRMAN ROBERTI: Thank you, Senator.

21 Senator Kopp is here.

22 SENATOR KOPP: Thank you very much, Mr. Chairman,
23 Members of the Committee.

24 I apologize to Mr. Costamagna and to the Members of
25 the Committee for my lateness. I won't take much time. I
26 simply plumb blew it, because when the sergeant called and left
27 word to be here at 3:00, it simply went by me that you would
28

1 begin at 1:30. I'm sorry I wasn't here to present
2 Mr. Costamagna, who, of course, has appeared before the
3 Committee before for a substantial period of time.

4 I record and want to memorialize my total support for
5 his confirmation. I practiced law in San Francisco since
6 December, 1955. I practiced as a general practitioner in my own
7 small office since April, 1959. I am familiar with
8 Mr. Costamagna both personally and also his reputation for truth
9 and veracity in the community in which he has practiced law
10 almost as long as I have. His reputation is of the highest
11 order.

12 His qualities of temperance and temperate judgment,
13 of objectivity, of scholarship, and of sincere application of
14 judgment on facts, and application of the law, is also of the
15 highest quality.

16 I testify that he will, as he has been, bring to the
17 Workers' Compensation Appeals Board the quality of ability to
18 evaluate facts, apply law, which is not only consistent with the
19 purposes for which that Board has been established by the
20 Legislature of the State of California, but also with the
21 highest standards of service to the public.

22 I recommend him, Mr. Chairman and Members of this
23 Committee, for confirmation without any reservation whatsoever.

24 I thank you.

25 CHAIRMAN ROBERTI: Thank you, Senator.

26 Are there any other witnesses in support? Yes,
27 please come forward.
28

1 MR. MATTHEWS: Jerry Matthews, representing 28,000
2 firefighters.

3 We'd just like to go on record in support. We did
4 send a FAX at late notice. We forgot the time of the hearing,
5 and we apologize for being a little late today, but we're
6 definitely in support of Mr. Costamagna.

7 CHAIRMAN ROBERTI: Thank you very much, Mr. Matthews.

8 Is there anyone in opposition who hasn't had a chance
9 to come forward?

10 Then before us is the appointment of Mr. Arthur
11 Costamagna, Workers' Compensation Appeals Board. Do I hear a
12 motion?

13 SENATOR CRAVEN: I move, Mr. Chairman.

14 CHAIRMAN ROBERTI: Senator Craven moves the
15 confirmation be recommended to the Floor.

16 If I might speak to the motion, it's a very difficult
17 vote for me to cast, Mr. Costamagna. Your reputation strikes me
18 as absolutely impeccable.

19 But there is a policy dispute as to your votes on the
20 Board itself.

21 And I'm trying to strive as much as I can for a
22 balanced Board. I guess it's unfortunate, but I did vote for
23 Ms. Marshall, and I know that isn't solace as far as a vote for
24 you is concerned, but during this whole year of trying to find a
25 way of compromising the difficulty of the appointment process,
26 I've been trying to find a way which primarily will allow us to
27 have a Board that's balanced.
28

1 I note that you have a tremendous labor support,
2 almost united support, as far as the Federation of Labor is
3 concerned, but there are very significant organizations
4 representing public employees who still are in opposition to
5 you.

6 Because of that, I probably will abstain on the vote.

7 I think you're extremely well qualified. Yet, on the
8 other hand, I think their desire for a balance has to be heard,
9 too.

10 SENATOR CRAVEN: Mr. Chairman, I understand what you
11 have to say. I'm somewhat disheartened by what it sounds like.

12 However, I don't think that we should be in a
13 position to vest upon Mr. Costamagna the sins of the father. He
14 is, perhaps, being victimized by virtue of being the beneficiary
15 of an attribution to him of things over which he has no control,
16 nor has he had. And the fact that he may be sort of singular in
17 his position on that Board is really no fault of his own. It
18 speaks better and more eloquently to his competence than
19 anything else.

20 I would hope that you would consider that.

21 CHAIRMAN ROBERTI: On that point, actually, I do not
22 blame Mr. Costamagna for the problems on the Board, any more
23 than I would expect somebody to blame me for all the problems of
24 the Legislature, since I've been around and in a leadership
25 position for quite sometime. I recognize how those things pile
26 up on people.

27 I guess part of the problem the Board faces, the
28

1 difficulty, is just the growth of the State of California, and
2 the difficulty of the Legislature and the executive to work out
3 many of the problems, and then they're visited with the results.

4 So, I don't necessarily fault the Board. I guess we
5 can always do better, and that includes us here, but I don't
6 fault the Board, and certainly not you for that.

7 MR. COSTAMAGNA: Thank you.

8 CHAIRMAN ROBERTI: Senator Craven's motion is before
9 us. Secretary will call the roll.

10 SECRETARY WEBB: Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Senator Mello.

13 SENATOR MELLO: No.

14 SECRETARY WEBB: Senator Petris.

15 SENATOR PETRIS: No.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Senator Roberti.

19 CHAIRMAN ROBERTI: The vote is two to two; the vote
20 fails.

21 With that, Mr. Costamagna, your appointment stays
22 with us until tomorrow. Tomorrow, I think, is the last day.

23 If there were some way to extend it, believe me, I
24 would be the first one to try to extend it and find a way out,
25 but I don't know. There is no way. We've been through this.

26 MR. COSTAMAGNA: May I say something?

27 CHAIRMAN ROBERTI: Yes, please.
28

1 MR. COSTAMAGNA: I would like to first of all thank
2 you, Senator Roberti, and this Committee for all of the
3 consideration you have given me the past year.

4 I want to thank Senator Kopp for his support.

5 I wish to thank a member of your staff who has been
6 outstanding, and that's Ms. Nancy Michel, over the past year in
7 just helping me proceed here.

8 And I also wish to thank the people who have
9 testified here today, both on my behalf and against me. I think
10 that they have all, especially on a Sunday, were very sincere in
11 their testimony.

12 But I have one other thing I want to thank you for,
13 in a way, is lifting a great burden from my shoulders. And I
14 don't say that facetiously. Whoever succeeds to this position
15 in the next couple of years is going to have a terrible burden,
16 I assure you.

17 My plan a year ago was to retire. My wife is in the
18 audience, and she said to me the other day, she says, "If you
19 don't make it, I think I'll go up and shake the hand of every
20 Senator there and thank them for giving me my husband back."
21 And I think you all know what that means.

22 I don't know what more to say. I just, again, say
23 thank you to all of you, and I appreciate all your courtesies
24 very, very much. Thank you.

25 CHAIRMAN ROBERTI: Your response, Mr. Costamagna, is
26 very gracious, and it's indicative of the gentleman you are.
27 And it is a shame that at times, policy differences intervene
28

1 when, on a personal basis, we would rather do something
2 otherwise.

3 SENATOR CRAVEN: Mr. Chairman, may I ask a question?

4 CHAIRMAN ROBERTI: Senator Craven.

5 SENATOR CRAVEN: This is sort of parliamentary
6 inquiry.

7 Is there a way that I might withdraw this from
8 Committee and take it to the Floor?

9 CHAIRMAN ROBERTI: Well, I guess you're free to do
10 that on the Floor, yes. That's always an option of a Member.

11 SENATOR CRAVEN: It's just a thought. I wanted to
12 see whether I was correct in assuming that.

13 CHAIRMAN ROBERTI: This Committee is adjourned.

14 Thank you, Mr. Costamagna.

15 [Thereupon this portion of the
16 Senate Rules Committee hearing
17 was terminated at approximately
18 3:32 P.M.]

19 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of July, 1991.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

CELESTINE Y. FARMON, Warden
Central California Women's Facility, Madera

WILLIAM B. KOLENDER, Member
Board of Governors
California Community Colleges

MARION McDOWELL, Member
State Board of Education

MICHAEL R. MONAGAN, Member
Occupational Safety and Health Appeals Board

TERESA ROCHA, Warden
Northern California Women's Facility, Stockton

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Celestine Y. Farmon, Warden of the Central California Women's Facility in Madera. Ms. Farmon, please come forward.

We'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. FARMON: I'm currently the acting Warden at the Central California Women's Facility. Prior to that, I was appointed and confirmed as the Warden of the Northern California Women's Facility in Stockton.

I've got, this September, 23 years of experience with the Department of Corrections, with a fairly varied and unique experience, having begun in the clerical field, promoting up through staff services and fiscal management.

CHAIRMAN ROBERTI: My goodness.

MS. FARMON: I think the broad base of my experience provides me with a level of cross section operational expertise that qualifies me for this position.

CHAIRMAN ROBERTI: Very good, thank you.

I think I'll ask you a question about overcrowding. Is that a problem at your prison? If so, do you have any proposals, programs, plans on how to cope with it?

MS. FARMON: Like all of the facilities in Corrections, I too am experiencing a level of overcrowding. Mine is somewhat less than most of the existing institutions in

1 that we just activated the facility October 1st of last year.

2 I have begun a degree of overcrowding in our
3 Reception Center. There is an anticipation of a need to
4 overcrowd the entire facility.

5 One of the advantages of being involved in the
6 developmental process for the facility was the -- some level of
7 anticipation of overcrowding, and being able to look at the
8 program needs for an overcrowded facility, up to and including
9 educational programs, vocational programs, and work assignments.

10 CHAIRMAN ROBERTI: Are there any other questions of
11 Ms. Farmon? Senator Petris.

12 SENATOR PETRIS: Are most of your inmates there
13 illiterate? And if so, is there a learning program going,
14 teaching language?

15 MS. FARMON: The female population experiences
16 somewhat of a higher academic level than the male population,
17 but we're averaging -- their academic level is averaging about
18 7.0 GPO.

19 We currently have a program at the institution for
20 any inmate who has less than a 9.0 educational level that we are
21 requiring them to enter into the academic program. That's also
22 in compliance with some legislation that was recently passed.

23 SENATOR PETRIS: So that's mandatory?

24 MS. FARMON: Yes.

25 SENATOR PETRIS: What is the goal?

26 MS. FARMON: The goal is for, hopefully, a GED;
27 however, with the turnover of the prison population --
28

1 SENATOR PETRIS: Is that a general education diploma?

2 MS. FARMON: Yes, sir.

3 SENATOR PETRIS: Equivalent?

4 MS. FARMON: Yes, sir.

5 SENATOR PETRIS: Some people claim there are a lot of
6 discrimination problems in that facility.

7 MS. FARMON: In --

8 SENATOR PETRIS: In that facility, in that prison.

9 MS. FARMON: I'm not sure specifically what you're
10 reference is, sir. I'm unaware of any significant degree of
11 complaints.

12 SENATOR PETRIS: Central California Women's
13 Facility.

14 MS. FARMON: Yes, sir.

15 SENATOR PETRIS: You're not aware of any grievances
16 being filed?

17 MS. FARMON: No, sir, not with --

18 SENATOR PETRIS: None at all?

19 MS. FARMON: I don't want to say none at all, but
20 when you say a high degree of complaints, there has not been a
21 high degree of complaints.

22 Obviously, there are times when individuals may see
23 an issue differently than the administration does.

24 SENATOR PETRIS: I'd be surprised if that weren't
25 true.

26 MS. FARMON: Yes, sir.

27 SENATOR PETRIS: To get back to the education part,
28

1 what percentage of the population is involved in these? I guess
2 you have a limited capacity.

3 MS. FARMON: I have about 18 percent of our inmate
4 population in an academic program.

5 SENATOR PETRIS: Is that the maximum that can be done
6 physically, given the budget limitations and the teachers, and
7 stuff?

8 MS. FARMON: Yes, sir.

9 SENATOR PETRIS: Do you bring in teachers by contract
10 with a local district

11 MS. FARMON: We do -- we are working with the local
12 school districts. Again, we only activated last October, but we
13 are working now with the local school districts for additional
14 evening classes for inmates who are interested in gaining a
15 higher education beyond the GED.

16 SENATOR PETRIS: What's been the reaction?

17 MS. FARMON: Both Merced County and Fresno Counties
18 are very favorable and working very closely with us, and the
19 population has a high degree of interest.

20 SENATOR PETRIS: So, you have all the students you
21 can handle right now given the capacity?

22 MS. FARMON: Given our current space, yes, sir.

23 SENATOR PETRIS: Now, you've been on since when?

24 MS. FARMON: I've been on the project actually since
25 August 1st of last year. The prison activated October 1st of
26 last year.

27 SENATOR PETRIS: Your overall length of service,
28

1 beginning in the fiscal section, is how much?

2 MS. FARMON: I began my work in the fiscal area, in
3 the parole division, approximately 1970.

4 SENATOR PETRIS: Does that give you a pretty good
5 overall view?

6 MS. FARMON: Yes, sir.

7 SENATOR PETRIS: The fiscal?

8 MS. FARMON: Yes. sir.

9 SENATOR PETRIS: I guess this is your first
10 appearance before the Rules Committee.

11 MS. FARMON: No, sir. It's my second.

12 SENATOR PETRIS: Your second.

13 Anything you want to tell us we could do to be
14 helpful in improving the situation there, or helping you do your
15 job?

16 MS. FARMON: I think continued support from the
17 legislative body is always helpful.

18 SENATOR PETRIS: Meaning what? Money?

19 MS. FARMON: Yes, sir.

20 [Laughter.]

21 SENATOR PETRIS: Now, where have I heard that before?
22 Thank you.

23 MS. FARMON: Thank you.

24 CHAIRMAN ROBERTI: Any further questions? Senator
25 Mello.

26 SENATOR MELLO: Thank you, Mr. Chairman.

27 I was interested in some recent articles about the
28

1 cutting back on the visitation privileges, and I know this again
2 is budget constraints to some extent.

3 My experience, having a facility down in Soledad, is
4 that maintaining contact with the family and visitors is really
5 important for the inmate, because without that, they sort of
6 stray out and they lose that very valuable family support.

7 Who's making these decisions? Is it the Warden, the
8 Superintendent, or is it coming right from the Department
9 Director?

10 MS. FARMON: Well, in that we're going through the
11 process of potential budget cuts, I as a Warden am forced with
12 responsibility to look at various areas where, if we are going
13 to have to reduce our expenditure levels, what are some of those
14 areas. And I have the ability to make the recommendations for
15 those cuts at my facility to my headquarters operations.

16 SENATOR MELLO: What's your philosophy as to visitors
17 visiting our inmates?

18 MS. FARMON: I agree with you that the visiting
19 program provides a degree of continuity for the family and that
20 that is important.

21 But in the process of having to make budget
22 determinations, I would have to weigh that against other
23 operational priorities. I think continued visiting would,
24 obviously, be important.

25 SENATOR MELLO: Such as what other priorities?

26 MS. FARMON: Expenditures in the academic area,
27 feeding program. We have some base-line programs that we've got
28

1 to provide in our institutional operations. And when we've got
2 to cut, we have to be -- look at all of those areas in terms of
3 the degree to which any one can take cuts, up to and including
4 the visiting program.

5 SENATOR MELLO: What about some of the complaints
6 that families show up there and they have to wait four or five
7 hours just to be processed? There seems to be a lot of long
8 delays.

9 One of the other problems like I have at Soledad is
10 that there's no transportation, if you live in Los Angeles,
11 other than your own car or taking a bus, which takes a whole
12 day. And once you get there, the hotel facilities where you're
13 staying over night are very, very few in that immediate area.
14 You're faced with staying in Salinas, and if you don't have a
15 car, taking a cab 20 miles.

16 There's just so much frustration out there, that I
17 think something's wrong administratively when there's that big a
18 hold up.

19 Don't they tell what days the visiting privileges are
20 allowed?

21 MS. FARMON: Yes.

22 I can speak from my experience. What can often
23 happen is, the inmates and/or inmate's family not clearly
24 understanding what the policies are, or attempting to modify the
25 policy to better accommodate their needs.

26 I think someone waiting four or five hours is
27 probably a rare occurrence rather than it being the norm. I
28

1 think most of our programs run rather smoothly once the inmate
2 and their family understands the processes.

3 SENATOR MELLO: Does your institution provide these
4 guidelines to the inmate where they can send them to their
5 families?

6 MS. FARMON: Yes, sir, we do.

7 SENATOR MELLO: Are all the guidelines in the
8 document?

9 MS. FARMON: Yes, sir. At my facility, we have an
10 inmate orientation package which is provided to each of the
11 inmates. In that document, it outlines all of the provisions
12 for the visiting program.

13 SENATOR MELLO: It seems like there were bills to put
14 a prison in Los Angeles, where I think 40 percent of the
15 inmates at Soledad come from.

16 My reason for supporting that is, the main purpose is
17 visitation, the convenience of having institutions at or near
18 the facility.

19 Now, we're not locating institutions in Los Angeles
20 because of the public not wanting them there, so we're moving
21 out to Ione, and Tehachapi, Pelican Bay, and other remote areas
22 where people welcomed the institution there as a means of an
23 economic benefit, plus other resource benefits. But this poses
24 a real problem.

25 I think what I'm trying to say is, the further away,
26 we're making it more difficult for families to visit inmates in
27 our institutions. And unless we have some streamlined, modified
28

1 way of them being able to come, and not get delayed, and also
2 have the frequency -- many times they have to give up a day's
3 work or two day's work in order to travel that far.

4 I just think we're separating the inmate from their
5 families, and I'm told, and I've read reports on this that
6 family visitation has a lot to do with the rehabilitation of the
7 inmate in the institution. Without it, they lose that very
8 valuable contact.

9 I think you, as a chief person, if that's what you
10 believe, you ought to be making a lot of loud noises for not
11 cutting back on visiting privileges. But I hear you're not
12 doing that; you're saying other priorities.

13 MS. FARMON: No, sir. I think what I'm saying is
14 that in looking at the overall institution operations and the
15 potential for cuts, that all areas of the institution would
16 have to be looked at. I think you would want me to do that in
17 terms of attempting to make cuts where it would best meet the
18 institution's operational needs and the fiscal need of the
19 Department and the state.

20 SENATOR MELLO: My priorities would be the Arts in
21 Corrections, academic programs, and visitation programs.

22 Thank you.

23 MS. FARMON: Thank you.

24 SENATOR MELLO: That's why I'm not a Warden or
25 Superintendent.

26 CHAIRMAN ROBERTI: Any further discussion or
27 questions or debate?
28

1 Is there any opposition in the audience?

2 Do I hear a motion?

3 SENATOR MELLO: Move.

4 CHAIRMAN ROBERTI: Senator Mello moves Ms. Farmon's
5 confirmation to the Floor with a recommendation to confirm.

6 Secretary will call the roll.

7 SECRETARY WEBB: Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 SECRETARY WEBB: Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Senator Craven. Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 The vote is four to zero; confirmation is
16 recommended to the Floor.

17 Congratulations.

18 MS. FARMON: Thank you.

19 [Thereupon the Rules Committee
20 acted upon legislative agenda
21 items.]

22 CHAIRMAN ROBERTI: William Kolender, Member of the
23 Board of Governors of the California Community Colleges.

24 Senator Craven.

25 SENATOR CRAVEN: As Mr. Kolender is taking his place
26 here to address remarks to the Committee, I would like to take
27 just a brief opportunity, if I may, in introducing Mr. Kolender
28

1 to you, although those of you who have been a Member of this
2 Committee for some years will recognize him as having been here
3 before when he was appointed to the position as a Member of the
4 Board of Governors of the California Community Colleges system.

5 Those of us in the San Diego area have known this
6 gentleman for many, many years due to his activity with the San
7 Diego Police Department, beginning, of course, as a street
8 officer and working his way up to become Chief of the
9 Department. During which time he went to the community college
10 there in San Diego and successfully completed his curriculum
11 and was awarded an AA degree after toiling for some eight years
12 in order to obtain it. But as a working police officer, he had
13 very little time, and he summarily attended San Diego State
14 University and received his Bachelor's degree.

15 He is a product of the system that he now looks at
16 with a little different view, and certainly if anyone knows the
17 system, knows what's necessary, he does. He presently has a
18 very responsible position with the Copley papers in San Diego.

19 I'm very, very happy to recommend Mr. Kolender to you
20 and to the Members of the Rules Committee.

21 CHAIRMAN ROBERTI: Thank you very much, Senator.

22 Mr. Kolender, we remember you well from coming here
23 in the past, also from visiting the San Diego area once in
24 awhile.

25 We'll still ask you what we always ask, and that is
26 why you feel you're qualified to maintain this position?

27 MR. KOLENDER: This is my third time before you in
28

1 this position. I hope I've gained a lot of experience.

2 I've been the President and was the President during
3 the passage of 1725 and the selection of our new Chancellor. I
4 think there's a lot more that has to be done.

5 Right now, we are on the threshold of some tremendous
6 increases in students in this system. We have a million and a
7 half, and a conservative estimate is close to 2 million by the
8 year 2000. We recognize the tremendous problems of funding and
9 keeping access to the people of California.

10 We're in the process right now of forming a
11 commission on innovation which we hope will take a look at the
12 system and try to improve the quality of education, yet do
13 something about the cost through new technology, through working
14 with the business community, through use of our facilities. And
15 we've appointed -- are in the process of appointing about 25 of
16 the top business men in California to help us do that.

17 CHAIRMAN ROBERTI: Thank you.

18 Are there any questions of Mr. Kolender? Senator
19 Petris.

20 SENATOR PETRIS: What do you think are your principle
21 duties? After all these years, what do you think are the main
22 things you're supposed to do on that board?

23 MR. KOLENDER: To see to it that -- to oversee the
24 system, to oversee the Chancellor and the Chancellor's office,
25 to look at the funding of the community colleges, try to put the
26 money out in the most economic way, to develop ways of better
27 improving the educational system by saving the state money. We
28

1 have a lot of duties.

2 SENATOR PETRIS: On the funding, in your view are
3 your duties limited to the best allocation of the monies as
4 they're provided by the state? Or do you see yourself having
5 the role of trying to make corrections in the funding if you
6 think they're inadequate, like asking the Legislature and/or the
7 Governor for more money for the community colleges, for example?

8 MR. KOLENDER: We have done that. We do see that as
9 our role. We do not approve all capital projects, nor do we
10 approve all requests for funding, yet there are times when we
11 think there is more money needed for certain areas, and we try
12 to support them by getting money for those areas.

13 SENATOR PETRIS: I see over the past few years,
14 you've had a 25 percent increase in enrollment.

15 MR. KOLENDER: Yes.

16 SENATOR PETRIS: But you can't accommodate them
17 because you have a cap. There's a cap on the amount of money we
18 send.

19 How in the world can you accommodate a rapidly
20 growing student population when the state says, "You can take
21 them in, but we're not going to give you money for them." How
22 do you cope with that?

23 MR. KOLENDER: Not very well, and that's part of our
24 problem. We are not able to give access to the people of
25 California that we think we should. That's why we've formed
26 this commission; that's why we're looking at ways in which to do
27 this, and that's why we're moving towards programmed funding in
28

1 1725 rather than the cap.

2 SENATOR PETRIS: Does the board favor elimination of
3 the cap?

4 MR. KOLENDER: I'm not sure. I think so.

5 SENATOR PETRIS: You don't recall if they've gone on
6 record.

7 MR. KOLENDER: Raising it to accommodate the students
8 and the needs.

9 SENATOR PETRIS: Has that been expressed to the
10 Governor, past and present?

11 MR. KOLENDER: Past. I'm not sure of the present.

12 SENATOR PETRIS: Would the board support legislation
13 to either raise the cap or eliminate it?

14 MR. KOLENDER: Certainly, I believe so, yes.

15 SENATOR PETRIS: You think you could get a pretty
16 good majority to do that?

17 MR. KOLENDER: Yes.

18 SENATOR PETRIS: Where does the Board meet? I hate
19 to ask you that; it shows my ignorance.

20 MR. KOLENDER: Across the street at the Hyatt.

21 SENATOR PETRIS: You meet up here?

22 MR. KOLENDER: Yes, most of the time. We do go to
23 campuses and other locations during the year.

24 SENATOR PETRIS: Once in awhile?

25 MR. KOLENDER: Yes.

26 SENATOR PETRIS: I see you're Chairman of the Human
27 Resources Committee. That sits on equity and diversity matters?
28

1 MR. KOLENDER: Yes.

2 SENATOR PETRIS: And that committee filed some kind
3 of report recently on the need for more women on the faculty. I
4 don't know if it touched any other minority.

5 MR. KOLENDER: All minorities.

6 SENATOR PETRIS: Can you tell us a little bit about
7 that? What do they recommend? What does your committee
8 recommend?

9 MR. KOLENDER: It's our belief that the community
10 college system should at best reflect the people of the State of
11 California. Therefore, we need to increase the amount of
12 administrators and teachers from the minority community.

13 We have developed a national system. We're
14 attempting to get people from California and other locations who
15 are qualified to teach at our campuses and trying to bring them
16 here.

17 SENATOR PETRIS: Do you have a good recruitment
18 program going?

19 MR. KOLENDER: It could be better, but we're working
20 at it, yes. We do have people developing it for us.

21 SENATOR PETRIS: Is that a function of your
22 committee?

23 MR. KOLENDER: It's a function of the staff of the
24 Chancellor's office, which our committee oversees.

25 SENATOR PETRIS: I assume, based on a few campuses
26 that I've seen, that the minority enrollment is much higher than
27 it is in the other branches, like Cal. State or the U.C. system.
28

1 MR. KOLENDER: There's no question about it. That's
2 one reason --

3 SENATOR PETRIS: That's what you're taking into
4 consideration when you're saying the faculty ought to reflect
5 that?

6 MR. KOLENDER: Yes, sir. And we are the last chance
7 for many people to get back into society and get an education,
8 so we're very enthusiastic about doing that. We think access is
9 very important.

10 SENATOR PETRIS: Do you think we're fulfilling that
11 pretty well?

12 MR. KOLENDER: Well, it's the largest college system
13 in the world. I think we're making some progress. I think 1725
14 was a tremendous opportunity for us, and we're in the process of
15 still implementing that and reforming the system.

16 I think we're doing very well with our monetary
17 constraints, and I hope the future's brighter. I'm looking
18 foreword to what this commission does.

19 SENATOR PETRIS: What are the weak areas that we can
20 improve on?

21 MR. KOLENDER: Well, sir --

22 SENATOR PETRIS: Where you might need legislative
23 help.

24 MR. KOLENDER: I'm not sure I know what legislative
25 help is, other than the funding, of course.

26 SENATOR PETRIS: It means carrying legislation if
27 there's a need for a change in policy, or expansion of your
28

1 authority. It means providing more money in the budget, adding
2 to whatever the Governor provides.

3 The Governor can't provide too much right now. He
4 inherited a pretty bad mess left over by his predecessor. So,
5 we're not blaming the current Governor. I'm blaming the prior
6 Governor, myself.

7 MR. KOLENDER: We would --

8 SENATOR PETRIS: Let me ask it like this. Don't you
9 at times, as a board member, say, "I wish we could get this or
10 that to improve the situation." And then somebody says, "Well,
11 the only one to do that would be the Legislature. So, why don't
12 we get them to help us?"

13 That's the kind of thing I have in mind.

14 MR. KOLENDER: We do that. I don't have the bills
15 with me, but there are several bills on which we asked you to
16 help. One is, we'd like to do something about giving the
17 Chancellor the opportunity to appoint his staff rather than have
18 them civil service.

19 SENATOR PETRIS: Is that in a bill now?

20 MR. KOLENDER: No, but it has been a formal request
21 to the Governor's Office.

22 SENATOR PETRIS: I see. So, you don't have a
23 reluctance as a board member to advocate legislation to bring
24 about an improvement in whatever area you think needs it?

25 MR. KOLENDER: No, sir.

26 SENATOR PETRIS: Well, some of the members of some of
27 the boards, including yours, don't seem to agree with that.
28

1 They seem to feel that it's totally improper for them to
2 recommend anything to the Legislature because you don't make
3 policy; you carry out our policy.

4 I would think there ought to be more members of your
5 mind who say, hey --

6 MR. KOLENDER: I would hope so --

7 SENATOR PETRIS: -- we have a problem here.

8 MR. KOLENDER: because if you can't call for changes
9 then --

10 SENATOR PETRIS: So, you don't have any reluctance?

11 MR. KOLENDER: No, not at all.

12 SENATOR PETRIS: Are there any bills in particular
13 that you're following or pushing in which you have an interest?
14 I don't mean you personally, but as a board member have an
15 interest?

16 MR. KOLENDER: I just went through them. There's so
17 many of them, I don't have any particular ones.

18 I have some questions regarding some of the
19 recommendations that are coming from our own staff, and I'm
20 going to be asking those questions tomorrow at the meeting.

21 SENATOR PETRIS: You mentioned bringing in business
22 people. What is their specific assignment going to be? Are
23 they helping in the curriculum, or are they emphasizing business
24 development, or what?

25 MR. KOLENDER: We think that we need new approaches
26 in the community college system because of the expanded growth
27 and limited resources that we're going to be having over the
28

1 next decade.

2 And we're going to ask the -- the Board of Governors
3 is going to appoint these people, and in turn, we're going to
4 ask them to establish task forces to help meet these goals, such
5 as the way we use our facilities, instructional delivery
6 systems, the use of new technology, cooperative ventures with
7 business, strategies of management of how many people we have.
8 And we're going to be looking at new approaches to try to
9 recognize these funding levels, but yet improve the system by
10 these ways.

11 SENATOR PETRIS: So they're kind of an advisory
12 group?

13 MR. KOLENDER: Yes, and it's pretty high up.

14 SENATOR PETRIS: High level people?

15 MR. KOLENDER: Some of them, I think, you'll probably
16 know. People like Dickson Arnett, William Bagley, Bernard
17 Bowler, Ken Gibson, Lee Kirschner, Tom Nielson, Alan Post, Susan
18 Kreiger.

19 SENATOR PETRIS: Are any of them from the Business
20 Round Table, the California Round Table?

21 MR. KOLENDER: Yes, there are, and there are people
22 there from the California Chamber of Commerce.

23 SENATOR PETRIS: It notice President Bush announced a
24 program the other day where he's going to ask national business
25 leaders to help in overhauling the whole public school system.
26 And he wants them to contribute about \$200 million from their
27 private sources.
28

1 Do you think it's appropriate for us in California to
2 latch onto that program and urge our businesses to do likewise?

3 MR. KOLENDER: I would sure think so. In fact, we
4 have. I don't want to publicly state it, but we do have
5 tentative funding for this from outside the system, from our
6 federal government.

7 SENATOR PETRIS: Do you know how much that is?

8 MR. KOLENDER: Yes, sir, half a million dollars.

9 SENATOR PETRIS: For this which year, this year?

10 MR. KOLENDER: Yes, for one year to fund this
11 particular commission on innovations.

12 SENATOR PETRIS: I thought you were talking about
13 contributions from business.

14 MR. KOLENDER: We do have a -- we have started a
15 Community College Foundation for the past several years that we
16 are in the process of -- we have money in that.

17 SENATOR PETRIS: How much is that?

18 MR. KOLENDER: I think we have approximately \$6
19 million, and they --

20 SENATOR PETRIS: Are those all private contributions?

21 MR. KOLENDER: Yes.

22 SENATOR PETRIS: The reason I'm asking is, I think
23 that program of the President's sounds very good. California
24 business leaders have been really good on trying to help our
25 public school system, the Round Table in particular, their Adopt
26 a High School program they have in various parts of this state.
27 I don't know to what extent they've been focusing on the
28

1 community college.

2 I would urge the board to encourage more and more
3 interest on their part. I know that some of them contribute
4 things like computers to schools. They've been tremendously
5 helpful.

6 I'm sure there are a lot of other companies that have
7 never been asked. I'm wondering if you have some kind of an
8 active policy on the board to take advantage of the President's
9 initiative and do it at the local level as well in California?
10 If not, I would urge you consider that.

11 MR. KOLENDER: I will see that's brought up.

12 SENATOR PETRIS: Thank you.

13 CHAIRMAN ROBERTI: Any further discussion or debate?
14 Is there any opposition in the audience?

15 SENATOR CRAVEN: Move Mr. Kolender's nomination to
16 the Floor.

17 CHAIRMAN ROBERTI: Senator Craven moves the
18 nomination to the Floor with the recommendation he be confirmed.

19 Secretary will call the roll.

20 SECRETARY WEBB: Senator Beverly.

21 SENATOR BEVERLY: Aye.

22 SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Senator Craven.

27 SENATOR CRAVEN: Aye.
28

1 SECRETARY WEBB: Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 Five to zero; the confirmation is recommended to the
4 Floor.

5 Congratulations.

6 MR. KOLENDER: Thank you, sir. Thank you all very
7 much.

8 CHAIRMAN ROBERTI: You're welcome.

9 The next appointment is Michael Monagan, Member of
10 the Occupational Safety and Health Appeals Board. Somebody else
11 we've seen before.

12 MR. MONAGAN: A return engagement.

13 CHAIRMAN ROBERTI: That's right, and we'll ask you
14 the same question, why you feel you're qualified to retain this
15 position.

16 MR. MONAGAN: I'm trying to come up with a different
17 answer than the last couple of times.

18 The last time I was here was, I guess, January of '87
19 -- no, excuse me, January of '88, and prior to that was June of
20 '87. Then the Board and the whole program was in the throes of
21 the disengagement. I guess everybody who has survived that
22 process and the re-engagement can certainly deal with budget
23 problems, SB 198 implementation, new penalties as mandated by
24 the feds.

25 I could point out, since money and budget seems to be
26 a pretty hot item these days, a year ago the Appeals Board came
27 in about 33 percent under budget, returning almost \$800,000 to
28

1 the state and the feds, unfortunately.

2 I'm sure that we will continue to address the budget
3 problems as well as we've done in the past.

4 CHAIRMAN ROBERTI: Very good.

5 I don't think we want to burden you with too many
6 questions.

7 Anybody in opposition?

8 SENATOR CRAVEN: Move.

9 CHAIRMAN ROBERTI: Senator Craven moves. Secretary
10 will call the roll.

11 SECRETARY WEBB: Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris. Senator Craven.

16 SENATOR CRAVEN: Aye.

17 SECRETARY WEBB: Senator Roberti.

18 CHAIRMAN ROBERTI: Aye.

19 Four to zero; confirmation is recommended to the
20 Floor.

21 Congratulations.

22 The next appointment is Teresa Rocha, Warden of the
23 Northern California Women's Facility at Stockton.

24 Ms. Rocha, we'll ask you the same question, why you
25 feel you're qualified to assume this position?

26 MS. ROCHA: Thank you.
27
28

1 Since my graduation from UC Berkeley in 1972, I have
2 been fortunate enough to have a number of positions, both while
3 altogether in the private, public and nonprofit sectors, which I
4 believe have given me an opportunity to develop skills,
5 managerial, budgetary, programmatic, that are directly
6 applicable to the job that I have now.

7 Included in those jobs that I've had since that time
8 have been an opportunity to serve both on the Juvenile and the
9 Adult Parole Board, and most recently to have managerial
10 experience directly within the Department of Corrections itself.

11 CHAIRMAN ROBERTI: Are there any questions of
12 Ms. Rocha?

13 I'll ask you the same question I asked Ms. Farmon.
14 Do you sense an overcrowding problem at your facility? If so,
15 what plans do you have in that regard?

16 MS. ROCHA: The Northern California Women's Facility
17 is unique in that it has a statutory ceiling on the number of
18 inmates that can be housed there. Therefore, while we are
19 housing two inmates per cell, we do not have an overcrowding
20 problem per se.

21 CHAIRMAN ROBERTI: Any other questions?

22 Are our budget cuts affecting your institution? I'm
23 sure the answer is yes; however, what are you doing about it?

24 MS. ROCHA: We are coping as best we can. I think
25 that one of the things it certainly has caused us to do is to
26 hone our skills in the area of putting together a data that we
27 can use to better make some of the very hard decisions that we
28

1 know we're having to face in the future.

2 CHAIRMAN ROBERTI: Senator Mello.

3 SENATOR MELLO: Jim Gomez is here. Are you in
4 support of her?

5 MR. GOMEZ [FROM THE AUDIENCE]: One hundred ten
6 percent.

7 [Laughter.]

8 CHAIRMAN ROBERTI: Is there any opposition?

9 SENATOR CRAVEN: Move.

10 CHAIRMAN ROBERTI: Senator Craven moves confirmation
11 be recommended to the Floor.

12 These are tough jobs, Warden. I wish you all the
13 best wishes, all the luck in the world.

14 Secretary will call the roll.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Senator Mello.

18 SENATOR MELLO: Aye.

19 SECRETARY WEBB: Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Senator Craven.

22 SENATOR CRAVEN: Aye.

23 SECRETARY WEBB: Senator Roberti.

24 CHAIRMAN ROBERTI: Aye.

25 The vote is five to zero; confirmation is recommended
26 to the Floor.

27 Thank you.
28

1 MS. ROCHA: Thank you.

2 [Thereupon this portion of the
3 Senate Rules Committee hearing
4 was terminated at approximately
5 4:18 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of July, 1991.


EVELYN J. MIZAK
Shorthand Reporter

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13 ROOM 113

14 SACRAMENTO, CALIFORNIA

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18 WEDNESDAY, AUGUST 21, 1991

19 2:07 P.M.

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25 Reported by:

26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ANDREW M. MECCA, Ph.D., Director
Alcohol and Drug Programs

BILL HALLUM
California Association of County Drug Program
Administrators

SUSHMA TAYLOR
California Therapeutic Communities Association

DENNIS G. AMUNDSON, Director
Developmental Services

BOB ZENZ, Legislative Advocate
California State Employees Association

MARION McDOWELL, Member
State Board of Education

ROBERT M. SCURFIELD, Member
California Horse Racing Board

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR CRAVEN: Let's return to the appointees scheduled. Dr. Mecca has a plane to catch, and I think we should try to accommodate him by bringing that up now, even in the absence of Senator Roberti.

Let's go to Item Three and ask Dr. Mecca, Director of Alcohol and Drug Programs, if he'd come up.

Doctor, if you would, please, tell us why you feel you're qualified for this particular position.

DR. MECCA: It's an honor to be here today. I'm honored by Governor Wilson's invitation to come to Sacramento and serve the citizens of California.

I grew up in an alcoholic home. My mother was a prescription drug abuser for 40 years; my brother is an alcoholic and cocaine addict, but by the grace of God, both of them are in recovery. I have lived with the problem all my life in my family, and had the opportunity when serving in the Medical Service Corps to set up the drug program in Vietnam in 1970.

Upon returning to this country, I moved to Northern California, where I was responsible for setting up the alcohol and drug programs in Marin in the early '70s and administered those, and developed the California Health Research Foundation which provides assistance to 48 out of the 50 states on treatment and prevention programs.

To be honest with you, I guess the greatest thing

1 that I can say as to why I feel qualified is that I love the
2 work. I come from the field, and I think that's very important
3 for where we are in California, which has captured the
4 imagination of the nation by dramatically increasing funding for
5 alcohol and drug programs.

6 We serve over 300,000 different clients every year in
7 all 58 counties. I think, given the cooperative effort and
8 bipartisan support for the Governor's new perinatal initiative
9 to serve crack and alcohol exposed babies, the expansion of
10 treatment and recovery programs by the redirection of funds
11 from the Department of Corrections, California is on the verge
12 of the opportunity to truly turn the corner in this decade and
13 will celebrate, hopefully, the diminishing effect of this
14 historical number one cause of death.

15 I'm honored by the invitation and hope that you will
16 support the Governor's invitation to do this work.

17 SENATOR CRAVEN: Very well, thank you, Doctor.

18 Do you have any witnesses to present on your behalf?

19 DR. MECCA: I do.

20 SENATOR CRAVEN: Do you want to call them up? Anyone
21 who wishes to speak in favor of this nominee, please come up.
22 State your name, please, and tell us what you do.

23 MR. HALLUM: Mr. Chairman, Members of the Committee,
24 my name is Bill Hallum. I represent the California Association
25 of County Drug Program Administrators.

26 And I'm sure you agree that California needs, and I
27 think even demands, strong leadership in the area of addressing
28

1 alcohol and drug programs in the State of California. As an
2 internationally recognized expert in this area, Dr. Mecca, we
3 feel in the Association, can provide this leadership.

4 Being of the field, Dr. Mecca has a history of county
5 administration that we feel can bridge the gap between state and
6 county missions. In his short tenure with the current
7 administration, Dr. Mecca has demonstrated vision and the
8 principles of integrity and inclusiveness: vision in his
9 support of the five-year Master Plan to address alcohol and drug
10 programs in California; integrity in his dialogues with the
11 county alcohol and drug program administrators that fostered a
12 cooperativeness that has been sorely lacking in previous
13 leaderships; inclusiveness, he's increased development of
14 partnerships that have already led to the facilitation of his
15 mention, the perinatal initiative sponsored by the Governor.

16 We of the Association are hopeful that Dr. Mecca's
17 noted experience with bringing public policy leaders to the
18 table will serve California well.

19 Members of the Committee, the California Association
20 of County Drug Program Administrators strongly support your
21 endorsement for Dr. Mecca as leadership of the State Department
22 of Alcohol and Drug Programs.

23 SENATOR CRAVEN: Thank you very much, sir.

24 SENATOR PETRIS: Question, Mr. Chairman.

25 SENATOR CRAVEN: Senator Petris.

26 SENATOR PETRIS: What's the name of the organization?

27 MR. HALLUM: The California Association of County
28

1 Drug Program Administrators.

2 SENATOR PETRIS: On this partnership thing that
3 you've emphasized, and sitting down with public policy people,
4 suppose he were to sit down with your organization next week
5 seeking your recommendations. What does your group feel is the
6 greatest need that should be called to his attention?

7 MR. HALLUM: Well, I think that Dr. Mecca has hit on
8 a point just in what you mentioned, in the partnership. I think
9 many times those of us at the local level feel that the county
10 planning process has been circumvented by mandates that were not
11 of our own making.

12 SENATOR PETRIS: Now, in my county, they tell me
13 that. They also tell me they never get enough money to take
14 care of the problem.

15 MR. HALLUM: Well, I think that's never going to go
16 away.

17 SENATOR PETRIS: Especially this year.

18 MR. HALLUM: Yes, sir.

19 SENATOR CRAVEN: That's the watch word of county
20 government, right below "In God We Trust", "Where's the Money?"

21 [Laughter.]

22 SENATOR PETRIS: Any other points?

23 MR. HALLUM: No, sir.

24 SENATOR PETRIS: Thank you.

25 SENATOR CRAVEN: Thank you very much, sir.

26 Anyone else? Yes, ma'am.

27 MS. TAYLOR: Mr. Chairman, Members of the Committee,
28

1 my name is Sushma Taylor, and I thank you for the opportunity to
2 present testimony before your Committee on behalf of Dr. Mecca.

3 I am currently the Executive Director of Center
4 Point, Incorporated, a comprehensive program in Marin County.
5 But I am also the Chair of the California Therapeutic
6 Communities Association. It is in this capacity as Chair of
7 this statewide association that I address my comments to you
8 today.

9 The California Therapeutic Communities Association,
10 is the principal association of nonprofit residential drug
11 treatment programs in California. We represent over 10,000
12 clients. Our clients are primarily cocaine and heroin abusers.
13 They are largely indigent and on public assistance. Moreover,
14 for a majority, placement in our program is an alternative to
15 incarceration, and at less than one-half the annual expense.

16 Those who seek treatment are considered without
17 regard to their ability to pay for treatment. Our admission
18 policies are inclusionary. Our staff, while historically
19 underpaid, are compassionate, committed professionals who are
20 dedicated to humane and sound treatment and an improved social
21 condition.

22 We continue to struggle against changing patterns of
23 drug abuse, and the changing profile of the drug abusers.
24 Simply put, we are doing the best we can given the magnitude of
25 the problem and the paucity of resources. The battle against
26 alcohol and drug abuse is fought on many fronts. Successes are
27 hard-won. The effort requires an unwavering commitment from all
28

1 of us. The reclamation of a human spirit takes time and effort.

2 We in the field know that treatment -- that addiction
3 is treatable, and that there is extraordinary potential in the
4 most ordinary person. The recovering alcoholics and addicts who
5 complete our programs visibly demonstrate that change is
6 possible.

7 The California Therapeutic Communities Association
8 has been joined in our efforts by Dr. Andrew Mecca. We in the
9 treatment field are privileged to have an individual of
10 Dr. Mecca's dedication, vision and capability. Dr. Mecca's
11 personal philosophy, coupled with his enormous professional
12 talent, gives our field the critical leadership that is needed.

13 In the few short months of his tenure, he has
14 demonstrated a commitment to excellence, a call for
15 collaboration, and an optimism for long-term success.

16 On a personal level, I have had the distinct pleasure
17 of working closely with Dr. Mecca since 1973. In the preceding
18 -- in the last 18 years, Andrew Mecca has impressed me with his
19 compassion and his enduring belief that each individual can make
20 a difference, and he certainly makes a difference. The morale
21 in his Department, as well as the treatment provider community,
22 is at an all-time high.

23 We know that the problems of addiction persist, and
24 we know that resources are scarce. And we know that the
25 obstacles are many. Yet in spite of this, we remain positive
26 and committed to our task. This is due to the partnership that
27 has been forged between the Department of Alcohol and Drug
28

1 Programs and the treatment community. This partnership has been
2 developed at Dr. Mecca's invitation. This invitation has been
3 enthusiastically received by the treatment community.

4 Dr. Mecca has our wholehearted support, and it is
5 given without reserve. On behalf of the California Therapeutic
6 Communities and the clients we serve, I urge you to join our
7 partnership, and I urge you to confirm Dr. Mecca's appointment.

8 Thank you for the opportunity.

9 SENATOR CRAVEN: Thank you very much. We're most
10 appreciative.

11 Anyone else?

12 Does anyone wish to speak in opposition to the
13 nomination? There appears to be none.

14 SENATOR MELLO: I have a few questions.

15 SENATOR CRAVEN: Senator Mello.

16 SENATOR MELLO: My first one has to do with the
17 ethnic representation that you have within your Department
18 overall.

19 Our Rules Committee here, we have no say in the
20 Governor making your appointment, but we sent the Governor a
21 communication saying that we expect appointments to reflect the
22 ethnicity of the state, and male and female, last year, and so
23 far, there was an article, I believe, in yesterday's paper that
24 showed the Governor's recent appointments, 283, were by a great
25 majority Anglo white males. And the ethnicity in his
26 appointments were far lacking, way below. I'm talking about
27 your level.
28

1 But within your Department, your agency, you have
2 quite a few appointments to be made, people to serve with you.
3 I understand that you only have one Latino, one Black -- I don't
4 know whether male or female.

5 FROM THE AUDIENCE: Male.

6 SENATOR MELLO: Are you that one person?

7 [Laughter.]

8 SENATOR MELLO: If he's the person, then you were
9 brought in here and so forth.

10 But the thing is, I think statistics show that among
11 these ethnic groups, there's a higher proportion of alcoholism
12 and drug abuse statewide. This is what most of the studies have
13 shown.

14 I just don't know how you're going to reach out to
15 these people by not having people within your organization that
16 are knowledgeable of the ethnic problems, they're knowledgeable
17 of how to reach them, be bilingual.

18 I guess my question is, what are you going to be
19 doing to provide greater ethnic representation in your own
20 Department at the administrative level? I don't mean janitors
21 and people that are working in other categories.

22 DR. MECCA: I'm committed to the same goal, Senator.
23 And to -- just a point of clarification, of the 10 exempt
24 positions, there are two Black men, one Hispanic man, and a lot
25 of women.

26 SENATOR MELLO: When you say a lot of women, I'm
27 talking about the professional administrative level.
28

1 DR. MECCA: No, and I am -- the two Chief Deputies
2 are women.

3 SENATOR MELLO: Two out of ten?

4 DR. MECCA: No, four of the ten are women, and -- but
5 I agree with you. In fact, ethnic participation in treatment
6 programs in this state are -- far out weigh in numbers, are
7 higher proportionately than in the demographic profile. And I
8 think it's inherently responsible to look to every means
9 possible to have those populations in terms of accessing those
10 communities, feeling supported, and included.

11 I actually recruited two Hispanic women for these
12 positions, and -- who declined because of family relocation
13 issues.

14 I share the commitment and --

15 SENATOR MELLO: Two? There's 9 million Hispanics in
16 California.

17 DR. MECCA: I went for the best talent possible,
18 Senator, and they were two of my first choices. And they
19 declined it because of relocation issues with their families.

20 The other thing is, the Department as a whole is --

21 SENATOR MELLO: Excuse me for interrupting you. I
22 want to follow this train of thought.

23 When they declined, did you go on to seeking out
24 others? Or did you just say they're not out there, and you just
25 took the next --

26 DR. MECCA: No. I made a concerted effort. In fact,
27 had dedicated one of the exempt positions and had notified the
28

1 field how important it was. And during the budget process, we
2 returned it as part of the budget solution, one of the exempt
3 positions that was dedicated for an Hispanic person,
4 particularly focusing on treatment issues.

5 To balance that, what I've done, I have recently
6 recommended to the Governor the appointment of an Hispanic woman
7 and a Black man to the State Alcohol Advisory Board. There are
8 other vehicles to ensure their inclusion.

9 SENATOR MELLO: Is that a paying job?

10 DR. MECCA: No, but they're advisory in regard to
11 statewide policy and program efforts that help allocate over a
12 billion dollars in resources.

13 SENATOR MELLO: That's true, but I mean, what if
14 they're living in the ghetto or living in the barrio and are not
15 employed?

16 I'm looking for people who have a job that pays, that
17 they've exercised their background in helping to carry out their
18 responsibilities inn the State of California.

19 I mean, you can put them in advisory, nonpaying
20 positions. That's a lot of good window dressing, but it doesn't
21 deal with the problem.

22 DR. MECCA: One of the things we have recently, in
23 Los Angeles, for instance, recently surveyed all their alcohol
24 and drug programs, and it shows excellent, in terms of
25 publicly funded programs, representation in terms of ethnic
26 minorities, not just in staff positions serving these
27 populations, but also on the boards of directors. And I think
28

1 that's another area where I have been an advocate, and I think
2 my record speaks for itself, I share your commitment. I will
3 make every effort.

4 I have -- I think God's working in my life for the
5 talent that I've been blessed with at that Department, which,
6 department-wide, by the way, is at parity. So, if you looked at
7 our entire Department, we are very well represented with ethnic
8 staff.

9 SENATOR MELLO: I want to go back to these ten top.
10 Is that what you have at the top, administrative positions?

11 You share my commitment, but how many did you
12 actually, then, hire? What do you have in your top ten staff to
13 represent ethnic groups?

14 DR. MECCA: Two Blacks and one Hispanic.

15 SENATOR MELLO: You have three. The statewide
16 population of Hispanics --

17 DR. MECCA: Twenty-five percent.

18 SENATOR MELLO: I'm not for quotas, and I'm not
19 suggesting that, but if you're trying to deal with those
20 parameters, you'd have two-and-a-half positions that would be
21 filled by Hispanics, and Blacks around 8 percent. It's close to
22 8 percent in California, I think. So, you'd have two-and-a-half
23 and one. And there are Asians and other ethnic groups as well.

24 But if you look at the problem, the constituency out
25 there, there should be an imbalance leaning towards more ethnic
26 groups working there because, as you stated, indeed in my
27 statement, that the problem is alcoholism and drug abuse is
28

1 higher amongst those groups that were targeted than the average
2 population.

3 I think your commitment should be relative to the
4 extent of the problem, and half your staff at least should
5 represent these groups and be able to be bilingual, and be able
6 to go in there and focus with these groups on a local level.

7 DR. MECCA: I made a very serious commitment in terms
8 of recruiting. Those positions are now filled. They're filled
9 with the best people, I think, that were available in
10 California. I have recruited a lot of people from communities
11 so that people understand and recognize that the problems are
12 not going to be solved from Sacramento, but rather in supporting
13 the technology transfer, the resources, and the leadership to
14 support community initiatives.

15 We all want the same outcome, and there are many ways
16 of getting there. And the architecture that people and
17 communities can build in sculpting solutions that they feel are
18 relevant for their community, they're motivated to implement and
19 sustain, and one of those is inclusion. Inclusion goes far
20 beyond this issue of just ethnic representation, but also
21 disabled and women, which I feel this administration has been
22 demonstrative in inclusion.

23 I can only say that there are many vehicles for
24 inclusion, for inviting, for recruiting, for reaching out to
25 include every constituency. And alcohol and drug abuse know no
26 barriers through ethnicity, economics, geographic.

27 And you have my commitment that I will continue to
28

1 advocate to include. If you use the 10 exempt positions, you
2 know exactly. They're filled. You know what the representation
3 is, and I can only say that that's a road sign in terms of it's
4 a beginning. They're incredibly committed people, dedicated. I
5 mean, I'm blessed by the talent that we've been able to recruit.

6 But there are other ways --

7 SENATOR MELLO: But I just want to say, and I want to
8 move on to some other questions. I don't want to take too much
9 time of the Committee here. But drugs is one of the most
10 important problems in California that we're not dealing with at
11 all.

12 Your commitment to advocate is one thing. I think
13 I'm looking for a commitment to implement the guidelines.

14 You said the Governor's done a demonstrative job of
15 appointing women. This article in the paper showed that it was
16 just the opposite. Of his top appointments, of 283, the number
17 of women appointed were far less, and they represent 51-52
18 percent of the population and about 55 percent of the wealth in
19 California.

20 I want to move on. I'm going to be looking to your
21 Department to really get the job done and be dealing with people
22 who can effectively reach the constituency out there.

23 Another question is, what is your concept of the
24 appropriate drug control strategy? And what do you plan to
25 implement in California? Will it be geared toward prevention,
26 treatment, enforcement, or outreach programs? How are you going
27 to operate there, knowing that we have a major, major drug
28

1 problem in California as well as the entire world?

2 DR. MECCA: Well, what I am committed to is
3 supporting the counties, 58 counties, and 546 municipalities,
4 developing their own plan of action. I think for too long the
5 state has tried to say, "We will give you money if you do this."
6 And in doing that, what's relevant for Compton and for San Diego
7 is much different, for instance, from what might be necessary in
8 Shasta County.

9 I support what is basically a result of Senator
10 Seymour's legislation, called the Master Plan. It's evolving
11 into something we call community works. It's an invitation for
12 everyone concerned in the community -- law enforcement,
13 education, parents, kids, service clubs, business, media -- to
14 come to the same table in your counties, to sit down and
15 basically develop -- define the problem as they live with it,
16 and design the architecture that's most relevant to their
17 community and that they're motivated to implement and sustain.

18 I think it's been very important, for instance, in
19 terms of statewide initiatives, that we look at a balance in
20 terms of prevention, or else we'll never have the resources to
21 continue pulling casualties out downstream when more and more
22 continue to jump in upstream. It's time to walk upstream. What
23 are the forces pushing people into this addiction?

24 I think the perinatal initiative, and putting this
25 state's money where its mouth is in terms of saying we have
26 72,000 crack and alcohol exposed babies every year. It's
27 estimated that in their lifetime, they will cost the taxpayers
28

1 approximately a million dollars each. The Governor was
2 confronted with why would you spend \$25 million during a
3 historical deficit. How can we afford not to when, in fact,
4 these programs are working?

5 Treatment and recovery is working, and that's why we
6 have diverted this year \$10 million from Corrections into
7 treatment and recovery for people who are going to be better
8 helped, better returned as productive, taxpaying citizens
9 through treatment and recovery.

10 SENATOR MELLO: You said we're going to have county
11 plans instead of us telling them what to do.

12 Are we going to have 58 different drug abuse
13 prevention plans in the State of California?

14 DR. MECCA: Yes, we are.

15 SENATOR MELLO: Fifty-eight?

16 DR. MECCA: That's right.

17 SENATOR MELLO: I'll be darned.

18 I thought your office would be providing the kind of
19 leadership that would at least let them tailor it to their own
20 local needs, but at least set some parameters for where the
21 priorities are.

22 DR. MECCA: Senator, we do. Our office is
23 responsible for the accountability. And the other thing that we
24 are going to provide you, and I think most important to the
25 citizens of California, for the first time in this nation,
26 California will implement an historical outcome study that will
27 finally measure the effectiveness of treatment and recovery
28

1 prevention programs so that you know, when you're deliberating
2 on policy and budget allocations, what's working, what isn't.
3 So that we can re-allocate to the things that are working and
4 stop treading the mill on the things that possibly aren't
5 working.

6 SENATOR MELLO: What is working now?

7 DR. MECCA: Well, I can tell you unequivocally,
8 treatment and recovery in this state has reached the capability
9 of working. We know that prevention programs that include kids,
10 in other words, include them in providing them life skills such
11 as leadership training, community organizing skills, programs
12 like Friday Night Live that include over a million kids now in
13 California, what makes them feel like competent players to go to
14 the community tables and feel like they are part of
15 participation to build healthier communities.

16 And the most important thing about this process, and
17 rather than being frightened by 58 plan, I would hope you'd be
18 encouraged, because it's beginning to say to the communities of
19 this state, "We can't do it without citizens coming to the table
20 and participating." And one of the major, major issues in
21 addiction is people not feeling they belong. That is one of the
22 source causes of low self-esteem, not feeling you belong.

23 This crisis, as the Chinese say, offers danger and
24 opportunity. It has offered an opportunity for people to
25 finally coming back and saying, "I can make a difference." They
26 begin to feel that they belong. Kids participating in these
27 programs begin to feel, "They're not pointing their fingers at
28

1 me saying you've got to fix me." They're inviting me to come
2 help build healthier school communities, healthier communities
3 for the 21st Century. People coming back together.

4 I begin to think that in fact, our alcohol and drug
5 abuse epidemic has actually offered the opportunity for people
6 to discover that they're capable of solving their problems in
7 their communities. Service clubs. We are providing resources
8 now to --

9 SENATOR MELLO: Let me interrupt you again because
10 I'm afraid that the Vice Chairman is going to say that I'm
11 prolonging and asking too many questions. I want to point out
12 for the record that your answers have gone on far longer than
13 my questions require them to. I don't want to be charged --

14 DR. MECCA: They're good questions. They inspire me.

15 [Laughter.]

16 SENATOR MELLO: Okay.

17 I was going to ask about senior citizens. I think
18 there's an over consumption of prescription drugs, some of which
19 are illicit drugs, by seniors: 12 percent of the population
20 consumes 35 percent of the prescription drugs.

21 What is your plan for curbing that or trying to
22 reduce the number of prescription drugs that are provided for
23 the senior citizen population?

24 DR. MECCA: You've come very close to home, Senator.
25 As I mentioned in my introduction, my mother was addicted to
26 Benzodiazepine for 40 years, and she had five physicians giving
27 her, you know, a little suburban housewife, all the Valium that
28

1 she wanted.

2 When I get past my anger about that, I think it is a
3 rigorous educational process starting in the medical schools,
4 that we can't treat everything, particularly the fact that 98
5 percent of Benzodiazepine prescriptions are provided by men
6 predominantly to women. That might be a whole separate issue.

7 But the fact is, it starts with a rigorous campaign
8 of education of physicians. And I'm committed to that. I'm an
9 outspoken advocate for people recognizing their own
10 participation, whether they be in professional dominions, the
11 workforce, or whatever, participating in the solution, and
12 physicians can start it.

13 SENATOR MELLO: One last question, and that has to do
14 with Medi-Cal benefits for pregnant women for alcohol and drug
15 abuse treatment programs. Do you support the state extending
16 Medi-Cal benefits to that category?

17 DR. MECCA: Yes.

18 SENATOR MELLO: Have you communicated that to the
19 administration?

20 DR. MECCA: Yes.

21 SENATOR MELLO: What are they doing with it?

22 DR. MECCA: They're working on it. I mean, I think
23 we all share -- there's a larger policy issue there, and that's
24 does it open up the flood gates. Is California capable of
25 providing the general fund investment necessary to draw down the
26 federal match to step into the arena? I think that's a larger
27 public policy deliberation for you all.
28

1 But obviously, I'm an advocate for maximizing the
2 resources. There's no way that we have enough right now to
3 treat all of those that need the services. That's a source of
4 revenue, but it enters into a dominion of much larger
5 proportions. You all, in partnership with the administration,
6 need to wrestle with it.

7 SENATOR MELLO: Is there a problem with expectant
8 women giving birth to children who are addicted?

9 DR. MECCA: 72,000 babies a year, Senator, exposed to
10 alcohol and crack. It is an epidemic beyond almost anything
11 else that we have ever wrestled with in this country.

12 SENATOR MELLO: How are you dealing with that? Do
13 you have an outreach program to try to educate them?

14 DR. MECCA: Yes, and treatment programs because by
15 treating the mother, we're treating the children. And we have
16 programs right here in Sacramento that are absolute models that
17 the rest of the nation's looking at, options for recovery that
18 were set up. Here in Sacramento is one of the twelve
19 residential programs statewide we hope to expand with the
20 Governor's \$25 initiative that was unanimously supported to,
21 maybe, 46-48 programs. But also, by enriching the outpatient
22 and building partnership between the traditional health care
23 system, which has had difficulty in treating these people, with
24 some of the technology and expertise in the alcohol and drug
25 arena, I'm very optimistic that what we have put in motion here
26 in California is sending a beacon of hope to the rest of the
27 country about this population. We have denied it long enough.
28

SENATOR MELLO: I want to thank you, and I want to ask that I get a copy of this transcript because you've said a lot of more positive things than I expected you to, but I want to be sure that they're just not words, that you actually work towards implementing what you stated on the record here.

Thank you, Mr. Chairman. I apologize for taking a little bit longer.

SENATOR CRAVEN: You're entirely welcome.

Any other questions? Senator Beverly.

SENATOR BEVERLY: No question.

I want it noted for the record that among those supporting the nomination is Senator Diane Watson.

I'm prepare to move the recommendation of approval of the confirmation.

SENATOR CRAVEN: Senator Beverly moves. Call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti. Three to zero.

SENATOR CRAVEN: Three-zero, the measure's out to the Floor.

DR. MECCA: Thank you very much.

[Thereupon the Rules Committee

1 acted upon legislative items.]

2 SENATOR CRAVEN: Let's go back to the appointees, any
3 objection? We'll call Dennis G. Amundson, Director of
4 Developmental Services.

5 Mr. Amundson, tell us why you feel you are qualified
6 for this very important position.

7 MR. AMUNDSON: Thank you, Senator and Members.

8 I am Denny Amundson. I'm extremely excited about my
9 appointment.

10 I feel I'm qualified because of a long-time history
11 associated with this program, going back into the 1960s, when I
12 had the pleasure of working for Assemblyman Frank Lanterman at a
13 time that Frank was conducting hearings around the state with
14 Senator Petris and others, very similar to what Senator
15 McCorquodale recently has been doing. During that period, I was
16 Frank's chief staff person on health issues, mental health,
17 developmental services issues, and was one of a cast of hundreds
18 who helped assist in the writing of the Lanterman Developmental
19 Disabilities Services Act.

20 I worked for Frank for several years. I also worked
21 within the administration of Ronald Reagan when he was Governor
22 as a Deputy Secretary in Health and Welfare Agency, specializing
23 in coordinating services with the mentally retarded.

24 When I left Frank in 1974, I had an opportunity to
25 try to practice what I was preaching and was the first Executive
26 Director of the North Los Angeles Regional Center for the
27 Developmentally Disabled, providing services to developmentally
28

1 disabled people in the northern part of Los Angeles County.

2 I've been away a few years from this program. I'm
3 very happy to be back. It's the most satisfying part of my
4 professional career to be associated with this program. And I
5 had some excellent mentors in Frank Lanterman and Senator
6 Petris, and Short, and Waldie and others.

7 SENATOR CRAVEN: Very well, thank you very much.

8 Senator Petris.

9 SENATOR PETRIS: I worked closely with
10 Mr. Amundson during the time that he described, and I followed
11 his career thereafter with interest.

12 I think we're lucky to have him appointed to this
13 position by the Governor. I'd like to move, if I may, Senator
14 Beverly, I'd like to move his recommendation for confirmation.

15 SENATOR CRAVEN: Very well, Senator Petris moves.

16 Is there anyone who wishes to speak in support?

17 MR. ZENZ: Thank you, Mr. Chairman and Members. Bob
18 Zenz representing the California State Employees Association.
19 We represent approximately 78,000 members covered under the
20 collective bargaining program.

21 Within the DDS program, there's approximately 11,500,
22 and most of those are CSEA members either through the collective
23 bargaining process or through the supervisorial, confidential,
24 managerial groups.

25 We, too, have had a long history with Denny Amundson,
26 not always on the same side of the table, but it's a pleasure
27 for us to be here. We don't find much opportunity these days to
28

1 support something this Governor has done, and we do support this
2 decision.

3 His door has been open to us. Since he's taken
4 office in the last five months, we've had at least three major
5 meetings with him and many informal meetings, and we seem to be
6 working very closely together. We're identifying problems
7 together. He's welcoming that process. Our membership is
8 welcoming that process.

9 We applaud the decision and support the confirmation.
10 Thank you.

11 SENATOR CRAVEN: Very good. And you must remember,
12 the longest journey begins with the first step.

13 Anyone else? Anyone who would speak in opposition?
14 There appears to be none.

15 Senator Petris has moved. Any comment by Members?
16 There appears to be none.

17 Call the roll.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Senator Mello. Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 Three to zero.

26 SENATOR CRAVEN: The recommendation is to the Floor.

27 Next is Marion McDowell, Member of the State Board of
28

1 Education.

2 Ms. McDowell, please tell us why you feel you are
3 qualified for this position.

4 MS. McDOWELL: I have served on the State Board for
5 the past three years. I think I have served well.

6 During that time, I believe I've developed a
7 reputation for being knowledgeable, for being open-minded and
8 fair, and for being well prepared on the issues that come before
9 us.

10 I also feel that I work well with not only my fellow
11 Board members, but with the State Superintendent and the staff
12 at the Department of Education. I believe that I work well with
13 the staff and Board members from the school districts that we
14 work with.

15 SENATOR CRAVEN: Very well.

16 Any questions on the part of the Committee? Senator
17 Petris.

18 SENATOR PETRIS: How long have you been serving?

19 MS. McDOWELL: Three years. It'll be three years at
20 the end of this month.

21 SENATOR PETRIS: You'll be starting on a new term?

22 MS. McDOWELL: New appointment.

23 SENATOR PETRIS: We've been through this before.

24 MS. McDOWELL: That's correct.

25 SENATOR PETRIS: The first go around, we were in a
26 lot of a stew over the bilingual program, and how should it be
27 structured, and what's the exit time, and so forth.

1 First of all, let me ask you, how do you think it's
2 working now? We don't have a statute that requires it, but
3 some schools are doing it.

4 MS. McDOWELL: I think California is making progress
5 in working with its limited English speaking students. I don't
6 think that we have the answer to how to address the acquisition
7 of the English language for our students. However, I think that
8 there are multiple approaches, and several approaches can work
9 and it depends a little bit on the staff that a school district
10 is able to acquire.

11 I think it's very important that we start very early
12 with language acquisition, even in the pre-school years, and
13 then to continue to develop the primary language of the students
14 as they are learning English skills.

15 SENATOR PETRIS: Can this be done without any
16 statute?

17 MS. McDOWELL: I can be done, and I think that,
18 perhaps belatedly, but at long last, districts are beginning to
19 recognize that they need to address the issue and are beginning
20 to do it without the statute being there.

21 SENATOR PETRIS: Do you have any idea what proportion
22 of districts are really actively involved in it and which
23 percentage are just --

24 MS. McDOWELL: I think we're seeing a great deal more
25 in Southern California than we are in Northern California.
26 Calexico is one of the outstanding districts in working with
27 their limited English population. As I understand it, it's
28

1 maybe 60-70 percent of their students, and they are an exemplary
2 program. And I have talked with teachers and administrators
3 throughout the state, and all of us are scrambling to try to
4 develop programs that will address these students.

5 SENATOR CRAVEN: I just wanted to ask a question.
6 Did you mention Calexico?

7 MS. McDOWELL: Yes.

8 SENATOR CRAVEN: In Calexico, about 95 percent of the
9 people are Hispanic.

10 MS. McDOWELL: Are Hispanic, and maybe 60-70 percent
11 of those are limited English speaking.

12 SENATOR CRAVEN: I'm sure that's true. If you can't
13 speak Spanish in Calexico, you're kind of out of luck. I used
14 to represent Calexico.

15 SENATOR PETRIS: In the city where I live, the school
16 district has to cope with at least 30 languages. I've been to
17 grammar schools that have a dozen languages in one school.

18 MS. McDOWELL: Exactly.

19 SENATOR PETRIS: And they had teacher's aides trying
20 to help the teacher. I've seen three to four in one class in
21 addition to the teacher. They don't have the money to do that
22 intensively in all the schools, unfortunately.

23 But you think we can accomplish it without any
24 further legislation. You don't think we need it?

25 MS. McDOWELL: Well --

26 SENATOR PETRIS: Let me ask it this way. Suppose you
27 have a local school board, like in my area, that says, "Well,
28

1 there is no statute to tell us, so they're going to have to
2 shift for themselves. We're not going to do anything. It
3 saves us money anyway."

4 Does the State Board have an interest in that?

5 MS. McDOWELL: We do, and that's one of the tough
6 issues when we are beginning to move so many decisions to the
7 local sites and to have site-based decision making.

8 It would seem to me that, perhaps, the way to deal
9 with that is to continue to empower parents so that they simply
10 demand from their local schools that the children have the
11 opportunity to acquire appropriate skills.

12 SENATOR PETRIS: Do you think those programs work?
13 Are they successful?

14 MS. McDOWELL: Which programs?

15 SENATOR PETRIS: Bilingual?

16 MS. McDOWELL: I think they are as successful as the
17 skills of the teachers are there. I think there are bilingual
18 programs that perhaps are not successful and there are others
19 that are highly successful.

20 I think that English as a second language, rather
21 than bilingual, can also be successful, depending upon the
22 staff.

23 SENATOR PETRIS: We have a bunch of those, too.

24 Thank you.

25 SENATOR CRAVEN: Thank you very much.

26 Senator Beverly.

27 SENATOR BEVERLY: Move the approval of the
28

1 nomination.

2 SENATOR CRAVEN: Senator Beverly moves the nominee,
3 Ms. McDowell.

4 Any other comments from Members of the Committee?

5 Anyone in the audience who wishes to speak in favor
6 or in opposition? There appears to be none.

7 Call the roll.

8 SECRETARY WEBB: Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 SECRETARY WEBB: Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Senator Craven.

15 SENATOR CRAVEN: Aye.

16 SECRETARY WEBB: Senator Roberti.

17 Four to zero.

18 SENATOR CRAVEN: Thank you very much.

19 We still have Mr. Scurfield, Ralph M. Scurfield,
20 Member of the California Horse Racing Board.

21 Mr. Scurfield, will you tell us why you feel you're
22 qualified?

23 MR. SCURFIELD: Mr. Chairman and Members of the
24 Committee, I've served in this capacity for eight months as a --
25 serving a term which expired on July 26th, and this is a
26 reappointment for a four-year term.

27 I have served as Chairman of the California State
28

1 Fair Board for five years, which ran a horse race meet there.
2 I've been interested in racing and the racing industry for some
3 time.

4 I enjoy this position very much, and I do have the
5 time and am willing to spend it in these efforts.

6 SENATOR CRAVEN: Very well.

7 Any comment from the Committee?

8 Anyone in the audience who wishes to speak? There
9 appears to be none.

10 Nick, do you have something?

11 SENATOR PETRIS: Only a motion.

12 SENATOR CRAVEN: Senator Petris moves. Call the
13 roll.

14 SECRETARY WEBB: Senator Beverly.

15 SENATOR BEVERLY: Aye.

16 SECRETARY WEBB: Senator Mello. Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Roberti.

21 Three to zero.

22 SENATOR CRAVEN: Three-zero. Thank you,
23 Mr. Scurfield.

24 [Thereupon this portion of the
25 Senate Rules Committee hearing
26 was terminated at approximately
27 3:27 P.M.]
28

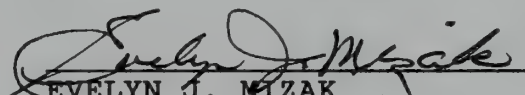
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman
SENATOR WILLIAM CRAVEN, Vice Chairman
SENATOR ROBERT BEVERLY
SENATOR HENRY MELLO
SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MARK V. MACTAS, FSA, Vice President
TOWERS, PERRIN, FORSTER & CROSBY
PERS Actuary
DAVID C. LeSUEUR, FSA, Principal
TOWERS, PERRIN, FORSTER & CROSBY
PERS Actuary
KURT SJOBERG
Acting Auditor General
ALLEN DAVENPORT
Service Employees International Union
DAVE LOW
California School Employees Association
AL DAVILA
Aaron Read & Associates
BOB ZENZ
California State Employees Association
DEAN REWERTS
California Union of Safety Employees

APPEARANCES (CONTINUED)

1 WILMA KREBS

2 California State University - Emeritus & Retired Faculty
3 Association

4 KAREN NEUWALD

5 Department of Personnel Administration

6 SENATOR ED DAVIS

7 CARL D. COVITZ, Secretary

8 Business, Transportation and Housing

9 SENATOR QUENTIN KOPP

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Next is the hearing of the actuary on the PERS fund, Towers, Perrin, Forster & Crosby. Is there somebody here representing the firm? If they could please come forward, and if you could wait a couple of minutes, I promised Senator Cecil Greene, who is the Chairman of the Public Employment and Retirement Committee in the Senate, that he could be here and that he should be here.

Senator Craven, on another matter, has indicated that he prefers that they not ask the questions, but that's what we normally do, Senator. If it gets out of hand with third party Senators asking questions, we'll --

SENATOR CRAVEN: I'm not concerned particularly about their asking the questions.

I'm concerned with the logistics involved in where they ask the questions from.

CHAIRMAN ROBERTI: They get to sit next to the consultants. I know you'd rather it be from down there.

SENATOR CRAVEN: All the other witnesses come up and speak, pro or con, whatever, and they always do it from the same place. And yet, when a Senator has something, then he takes on the aura of a Member of the Rules Committee, and he sits up here at the dais. He looks down at the accused.

CHAIRMAN ROBERTI: That's what we've normally done.

SENATOR CRAVEN: I know, and I think normally we've been wrong.

1 CHAIRMAN ROBERTI: If you want to place it to a
2 vote, I'm happy to be out-voted. I'm going to vote to let
3 them come on up here, but if you want to vote the other way,
4 please feel free.

5 Senator Craven moves that Senators asking questions
6 do it from the witness stand, changing our former procedure
7 of letting them come up in the big chairs.

8 Secretary, call the roll.

9 SECRETARY WEBB: Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Senator Mello.

12 SENATOR MELLO: No.

13 SECRETARY WEBB: Senator Petris. Senator Craven.

14 SENATOR CRAVEN: Aye.

15 SECRETARY WEBB: Senator Roberti.

16 CHAIRMAN ROBERTI: No.

17 You get to make the decision, Senator Petris.

18 SENATOR MELLO: Mr. Chairman, before we move on,
19 I'd like to suggest a very distinguished person that's
20 sitting here in the front row that might be eligible to come
21 up here and join us as a private citizen. He at least should
22 be introduced, I think.

23 CHAIRMAN ROBERTI: He's going to introduce my
24 father, so I'd better do it before he does.

25 [Applause.]

26 CHAIRMAN ROBERTI: I'd rather he didn't ask any
27 questions.
28

[Laughter.]

CHAIRMAN ROBERTI: Senator, the roll is open. Your call, yes or no.

SENATOR PETRIS: No.

CHAIRMAN ROBERTI: Senator Greene, you can stay where you are. Three to two, the motion fails.

Now, we have the actuary. Senator Greene is here.

Senator Craven, I have to make a phone call for three minutes. I'll let you start it. If the actuary could come on forward.

We will ask you what we ask all the Governor's appointees. I guess you would qualify as an appointee. Why does the firm of Towers, Perrin, Forster & Crosby feel it is qualified to assume this duty as actuary, and if you can identify yourself and testify.

I'm going to turn the gavel over just for a few moments to Senator Craven, and I will return.

SENATOR CRAVEN: State your name, please.

MR. MACTAS: My name is Mark Mactas. I will be the principal actuary on the PERS engagement. I'm a Fellow of the Society of Actuaries, an enrolled actuary under ARISA. I'm a Vice President and principal of TPF&C and serve as senior actuary in the San Francisco office.

With me today is Dave LeSueur, also a Fellow of the Society of Actuaries, an enrolled actuary under ARISA, also a principal of TPF&C. Dave will be a key support actuary on the account.

1 We are two key members of the TPF&C team assigned
2 to this account, but there will be many others in our
3 organization involved as well.

4 In my remarks, I will cover four areas that I think
5 will illustrate our qualifications to perform the services
6 requested under this engagement. I'll talk about our firm's
7 overall resources, the local expertise we bring to this
8 engagement, our commitment to serving the state with the
9 highest quality service in a timely fashion, and a word about
10 our quality assurance programs that ensure that.

11 TPF&C is a large organization with over 60 offices
12 around the world. We employ some 700-800 actuaries in total,
13 and we enjoy the largest market share of the Fortune 1,000
14 companies, in addition to a substantial public sector
15 practice. Size, of course, doesn't mean anything unless we
16 can bring those resources to bear on specific client
17 problems, and we have a number of mechanisms in place in our
18 organization to facilitate that. That ensures that we will
19 give you objective advice based on experience and expertise
20 in a quick and responsive fashion.

21 Turning to our local expertise, among our local
22 public sector clients are: the University of California;
23 Department of Personnel Administration; Los Angeles County;
24 the City of Sacramento; the State Teachers Retirement System;
25 the Los Angeles Department of Water and Power; Orange County;
26 the City and County of San Francisco.

27 In addition, here in California we serve a major
28

1 share of the large case private sector market with clients
2 such as McKesson Corporation and Consolidated Freightways,
3 PG&E, First Interstate Bank, for example.

4 SENATOR PETRIS: Mr. Chairman, may I have a
5 question.

6 I'm sorry to interrupt you. When was this
7 appointment made?

8 MR. MACTAS: This appointment, I believe, was made
9 on August 22nd.

10 SENATOR PETRIS: It occurs to me that I for one
11 haven't had time to digest the material which I've just
12 received a while ago, and I think that probably some of the
13 public employee groups haven't had an opportunity.

14 I want to ask Nancy, what's the deadline on this
15 confirmation?

16 MS. MICHEL: Ninety days or the sixth day after we
17 come back.

18 SENATOR PETRIS: That's kind of a short time fuse.

19 MS. MICHEL: If the 60th day falls in the interim,
20 it would be the sixth day after we come back.

21 SENATOR PETRIS: The time isn't told by the
22 interim? Does the 60 days include the interim?

23 MS. MICHEL: If the 60th day falls within the
24 interim, we have six days after we return.

25 SENATOR PETRIS: Will we be meeting next week?

26 This is no reflection on your statement or
27 anything. It's just that it seems to me we need a little bit
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1 more time. I need more time so I can ask intelligent
2 questions, reasonably intelligent questions. I don't claim
3 to ask intelligent questions, but I like to get close to
4 that.

5 I think the public employees who are immediately,
6 directly affected ought to have a chance, also.

7 I'm wondering, Mr. Chairman, if our calendar would
8 allow for at least a one week delay. I'm not asking for it
9 to go over to next year, because that gets perilously close
10 to the deadline. If we could have at least until the next
11 meeting, I think it would be very helpful all around.

12 I'm sorry I didn't know about it sooner. I could
13 have contacted you and the Chair of the Committee and perhaps
14 arranged for it ahead of time so you don't even lose this
15 time that you're losing right now.

16 SENATOR CRAVEN: Let me ask, when did the Senate
17 first take an action on this issue?

18 MS. MICHEL: We just received this last week.

19 SENATOR PETRIS: The appointment wasn't made until
20 the 22nd of August.

21 MS. MICHEL: We have -- in your book there is the
22 Auditor General's analysis of this, so the Auditor General
23 responded in a timely fashion.

24 This morning the Assembly met for over two hours
25 and heard this issue, and did not vote to pass the issue out,
26 but that they would most likely meet again after some of
27 their questions were answered for a vote only.
28

1 SENATOR BEVERLY: Was that the Rules Committee?

2 MS. MICHEL: No, that was the Public Employment
3 Committee.

4 SENATOR C. GREENE: If I may, for the Members,
5 there was a meeting this morning with Assemblyman Elder's
6 committee. I sat there as a part of that committee, hearing
7 the presentation by all the people involved.

8 It was a split thing on the committee. There was
9 not enough votes to take it out of committee. It is
10 continued until next week.

11 There are some problems, however, with extending
12 too long a period of time, and the constraint is actually
13 fiscal for the state. Somebody has to start on the actuaries
14 for next year's budget process. And it has to be timely and
15 before we come back in January.

16 I might suggest to the membership and to the
17 Members that if it is going to be put off, that three or four
18 questions that are asked by the Auditor General be answered
19 in writing to the Committee.

20 One paramount thing in my mind, the question I
21 would like to ask, is the fiduciary duty of, and to be
22 covered quite well, as to how they'll handle the fiduciary
23 duty in providing these actuaries.

24 As all of you know, a lot of the actuaries are not
25 -- they're raw figures, but how they're interpreted, and some
26 of these percentages are forecast into the future, and how
27 they're done. I would like to see how we protect the retired
28

1 employees, and then how do we protect our state budget, too?

2 As I understood 702, it made this group a fiduciary
3 group, and they have to by law protect those employees. How
4 can they do both? And that's the very big question, I think,
5 for this committee.

6 SENATOR CRAVEN: Thank you, Senator Greene.

7 SENATOR PETRIS: Mr. Chairman.

8 SENATOR CRAVEN: Yes, Senator Petris.

9 SENATOR PETRIS: Maybe I can modify my suggestion
10 and hear the testimony, get as much information from these
11 gentlemen that they want to offer, and then put it over.
12 We'll have it partially done and we can ask --

13 SENATOR CRAVEN: I was, Senator Petris, about to
14 suggest that we do that.

15 SENATOR PETRIS: I'll withdraw my original
16 suggestion.

17 SENATOR CRAVEN: Very well. Let's proceed on your
18 last comment.

19 Would it be appropriate at this time to let the
20 gentlemen continue?

21 SENATOR PETRIS: Yes.

22 SENATOR CRAVEN: Would you, please.

23 MR. MACTAS: I'll finish my remarks and be happy to
24 respond to the Senator's questions on the fiduciary matter,
25 and then others you have at this time.

26 I wanted to speak for a moment about our firm's
27 commitment to this engagement. As part of it, we will open
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1 an office in Sacramento to ensure timely and responsive
2 service.

3 Just as what's happened in California with regard
4 to AB 702 is very important for the state, it's very
5 important for our organization. And we've put together a
6 team of professionals that I'm sure will give you the highest
7 quality service, and we will put significant quality
8 assurance procedures over and above our normal stringent
9 procedures in place to ensure the objectivity and
10 comprehensiveness of our advice.

11 The senior management of TPF&C at the highest
12 levels will be involved in the quality assurance process for
13 this engagement.

14 Finally, I'd like to talk about quality assurance
15 in a little more detail. Our firm is fortunate to enjoy a
16 reputation for providing work of the highest quality to our
17 clients. We recognize that it's very tough to maintain that
18 reputation, and we try everyday to do the things necessary to
19 preserve it.

20 Any time we as employees hear about our
21 organization's goals, the first thing that is stressed is
22 that we must do high quality objective work for our clients.
23 It's a key tenet of our organization.

24 And finally, just to summarize, I think our
25 organization brings the unique combination of firm wide
26 resources that are substantial with local expertise and
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1 delivery of those services. We have a commitment to doing
2 work of the highest quality for this state on a cost
3 effective basis.

4 Now I'd be happy to respond to any questions the
5 Committee has at this time.

6 SENATOR CRAVEN: Senator Petris, do you have
7 anything that you'd like to say at this time?

8 SENATOR PETRIS: Well, yes, if we're going to cover
9 it partially, I'd like to ask you a question or two.

10 How do you see your responsibility as the actuary?
11 We have lines running in different directions. One is to
12 PERS as beneficiaries, and the other is the problem of
13 reducing the contributions of the employer.

14 Which comes first as you interpret the assignment?
15 Is there a conflict between the two? If there is, to which
16 should your devotion be directed?

17 MR. MACTAS: We don't see a conflict. If we did,
18 it would cause us great concern.

19 Our obligation is clear under AB 702, and it's
20 clear under the California Constitution. We are fiduciaries
21 with respect to plan members. In the final analysis, they're
22 our ultimate client.

23 The objective of minimizing costs for benefit
24 promises that have been made does not compromise our ability
25 to fulfill our fiduciary obligation.

26 SENATOR PETRIS: Are you saying your first
27 obligation is to the beneficiaries?
28

1 MR. MACTAS: That's correct. It's incumbent upon
2 plan sponsors and employers who have made benefit promises to
3 responsible fund for those benefits.

4 SENATOR PETRIS: That's the current statute.

5 MR. MACTAS: That's the current statute.

6 What happened -- and I'm not a lawyer, so bear with
7 me, please -- is, there's been a shift in responsibility on
8 actuarial matters from the PERS Board to the independent
9 actuary. But these responsibilities have always been there,
10 and they've been in the Constitution of this state. So, it's
11 a shift, and there's always been this dual fiduciary
12 responsibility as well as minimization of cost element
13 present. Now it's just been shifted to the independent
14 actuary.

15 SENATOR PETRIS: In your statement, your firm's
16 statement, it makes several references to balancing the two:
17 the interests of the beneficiaries and the state. That's a
18 little difficult in view of what you just said.

19 MR. MACTAS: I'm happy to expand on some of those
20 references, and it's unfortunate that, I think, complete
21 knowledge of our proposal is tough, given the urgency with
22 which action may have to be taken. Let me expand on what we
23 meant there.

24 First and foremost, we intend to ensure that
25 beneficiaries' rights are protected. When we talk about
26 recognizing the fiscal realities under which the state must
27 operate, we're talking about things like -- things that may
28

1 influence future events. If the fiscal realities are such
2 that there will be fewer PERS members or more PERS members in
3 the future, we need to know that. If there are things going
4 on that will influence what the rate of pay increases will be
5 in the future given fiscal constraints, we need to know that.

6 It should not be interpreted that we will do our
7 fiduciary work and actuarial calculations, see the result,
8 and modify it if the fiscal situation won't accept the
9 contribution that emerges. That's not what we intend by that
10 statement.

11 So, just to reiterate, our clear responsibility as
12 fiduciaries to the plan members are to those members, in the
13 final analysis. Those are our clients, and we intend to
14 discharge our responsibilities accordingly.

15 SENATOR PETRIS: Thank you.

16 SENATOR CRAVEN: You made mention of the dual
17 relationship which you have actuarially.

18 Where does your concern for the employer's
19 contribution come into play?

20 MR. MACTAS: Our calculations, the fundamental
21 calculation that we will come up with is the contribution
22 that's going to go into the system from employers. I mean,
23 that's one very concrete measure. And after all our
24 analysis, we will produce a recommended contribution
25 requirement, and that's what the employers will see.

26 SENATOR CRAVEN: What attitude would you have as to
27 what I will call, for the want of a better term, an over
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1 protection on the part of the employer as to the earnings of
2 the other side of the issue, the beneficiary side?

3 We had situation evolving this past session, where
4 the administration felt one thing, and because of that, it
5 occasioned their projects as lessening their contribution
6 level. What would your reaction to that be?

7 MR. MACTAS: Are you referring to the final
8 one-year compensation and the assumed increase in salary
9 base?

10 SENATOR CRAVEN: Yes, the balance off as to who
11 pays it.

12 MR. MACTAS: We have to be mindful of a lot of
13 information and projections that are made. We will have to
14 rely on other people to provide us with the necessary
15 information for us to make informed judgments about how we
16 make those projections.

17 We think that in the case where projections can be
18 off with the result being, if they're off, we would have
19 changed our judgment on whether or not to do something, it
20 would be our suggestion to do a sensitivity analysis to show
21 what if we're wrong. So that all parties charged with making
22 decisions on such matters have a full picture of the
23 potential financial implication, so that there are no
24 surprises.

25 SENATOR CRAVEN: In your position, would you have
26 an actual physical rapport with the administration as it
27 relates to the fiduciary relationship?
28

1 MR. MACTAS: The law, AB 702, calls for us to be
2 under contract with the Office of the Governor. At the same
3 time, we are fiduciaries with respect to plan members.

4 I might draw an analogy here between this situation
5 in California and our private sector engagements. ARISA,
6 which you're not subject to, calls for the enrolled actuary
7 to be retained on behalf of plan participants. At the same
8 time, we are hired by the employer or plan sponsor.
9 Conceptually, that's very similar to the situation we're in
10 here, with the following exception, that under ARISA we are
11 not fiduciaries. In California, we will be fiduciaries,
12 which is even a higher standard than under ARISA. And we're
13 in that situation all the time, give objective and
14 independent advice.

15 SENATOR CRAVEN: Thank you.

16 CHAIRMAN ROBERTI: Senator Greene.

17 SENATOR C. GREENE: How do you look at and treat
18 excess funds? In other words, that's been some of the
19 controversy with this fund.

20 And number two is, on the rate setting, how long a
21 time frame do you forecast so there's not a big fluctuation
22 in employers contribution? What is it, a five-year period?

23 MR. MACTAS: Speaking to your second question
24 first, the actuarial assumptions utilized in performing
25 actuarial studies are intended to be long-term in nature. We
26 don't have a unique ability to project what's going to happen
27 in the future, but the time horizon is long.
28

1 We'd be reluctant to make frequent changes in
2 assumptions, given changes that occur frequently, so we'd
3 look at a long-term horizon and try to make the best estimate
4 that we can, after having gathered all the knowledge we can
5 of what experience might emerge.

6 How we treat excess funds, I have difficulty in
7 responding directly, and please steer me in the direction
8 that you'd like.

9 One thing that we do -- in order to answer your
10 question appropriately.

11 SENATOR C. GREENE: I understand.

12 MR. MACTAS: We will do evaluation of the
13 liabilities of the system. We will see what kind of assets
14 there are in the system and make a recommendation as to the
15 appropriate contribution rate.

16 As far as excess funds, you know, all funds are
17 taken into account when doing evaluation. So, that's my
18 answer to your question.

19 SENATOR C. GREENE: So, you approach a fund with no
20 assumptions that are actually excess funds there available?

21 MR. MACTAS: No excess funds per se.

22 SENATOR C. GREENE: All right, thank you.

23 CHAIRMAN ROBERTI: Senator Craven.

24 SENATOR CRAVEN: Mr. Chairman, in your absence,
25 Senator Petris made a comment that he was taken somewhat by
26 surprise on this appearance today, and that he was not
27 totally prepared to come forth with many of the questions
28

1 which he has in mind. And the thought was that we would hear
2 from these gentlemen today and ask, perhaps, some preliminary
3 questions, but with the overriding thought that they would
4 come back and, perhaps in the week following, which is a
5 relatively short period of time but necessitated by our
6 schedule as well, but it would give Senator Petris and others
7 of his colleagues the opportunity to gather their thoughts,
8 and then wrap it up.

9 CHAIRMAN ROBERTI: That's fine. I'd like to take
10 testimony today, however. Then, if we have any additional
11 questions, we'll take those next week and take a vote next
12 week.

13 I especially would like to hear, if there is any
14 opposition, hear the opposition today, and only hear
15 opposition next week if it's based on anything new that's
16 come up, or any observations the firm has made that the
17 opposition may not like.

18 Have you concluded your initial presentation?

19 MR. MACTAS: Yes.

20 CHAIRMAN ROBERTI: First I'll ask if there's any
21 opposition, then I'll ask for anybody who wants to come up
22 and make observations.

23 Is there any opposition? Is there anyone who would
24 like to testify? I especially would like Mr. Sjoberg, the
25 Acting Auditor General, to come forward. And I understand
26 Mr. Davenport, representing Service Employees, would like to
27 also come forward.
28

1 MR. SJOBERG: Good afternoon, Mr. Chairman and
2 Members.

3 Last week you asked that our office review the
4 process and methodology that the Governor's Office employed
5 in selecting the appointment of an actuary, and we reviewed
6 that process and determined what the Governor had undertaken
7 to make their selection. We did not attempt to re-address
8 the policy issue of AB 702 nor to really spend enough time to
9 make a decision about the qualifications of this firm
10 vis-a-vis the others who proposed.

11 However, we did want to assure the Committee
12 through our review whether or not the Governor had fulfilled
13 what he had proposed he would do in making the selection.
14 So, we did look at the development of the RFP. We looked at
15 the qualifications that were outlined, and we saw that in
16 fact it had been -- there were 23 firms who had initially be
17 given a copy of the RFP for consideration: thirteen came to
18 a bidders' conference; seven finally did make proposals.
19 Those seven were individually graded. We re-scored the
20 grading sheets. We found some minor errors but none changed
21 the relative outcome or ranking.

22 So, the letter report which we've delivered to the
23 Committee outlines the process that the Governor followed.
24 We can assure you that that process was in fact followed,
25 based upon the evidence that we have reviewed.

26 The selection itself, with the process of allowing
27 this many firms to participate and to decide on the outcome,
28

1 is, in our view, would lean toward an impartial selection.
2 In that sense, we think that the Governor fulfilled his
3 promises that he has outlined and in terms of his selection.

4 We did also make four recommendations. The
5 contract, of course, has not been let.

6 CHAIRMAN ROBERTI: Are there any questions of
7 Mr. Sjoberg?

8 So, by and large, it's your observation the
9 Governor's process was thorough?

10 MR. SJOBERG: We believe it was thorough; however,
11 we did, as I said, make four recommendations.

12 CHAIRMAN ROBERTI: We have your letter.

13 MR. SJOBERG: Those recommendations --

14 CHAIRMAN ROBERTI: Please speak to your
15 recommendations.

16 MR. SJOBERG: Surely.

17 They relate to the fact that the contract has not
18 yet been negotiated between the parties. Of course, they're
19 awaiting confirmation before they do that. We think there
20 are four elements within the authority of the Governor to
21 negotiate that he ought to exercise. They range primarily in
22 clarifying some of the vague responses in the proposal to
23 assure that the state's interests are protected.

24 In one area, it relates to the creation of a
25 Sacramento office. We think that the costs incurred in the
26 creation of that office, the proposal by the actuary outlines
27 that those, if there was an early or premature termination of
28

1 the contract, that all of the costs associated with creating
2 a Sacramento office would be included. We think that is
3 certainly subject to some negotiation. There is a lawsuit
4 pending that could have some outcome between now and January.

5 So, we also think there ought to be an audit access
6 clause in this contract so that in the future, should there
7 be a question about any of the invoices that were submitted
8 and so forth, that either our office or another qualified
9 government auditor could go in and review those and make sure
10 that they are fulfilled, and that only expenditures related
11 to this contract have, in fact, been billed for.

12 So, as I say, there are three or four clarifying
13 areas. Mr. Caffrey, when we shared those with him, stated
14 that they would make every effort to include them.

15 Senator Greene has asked that in response, DPA or
16 the Governor's Office write a letter to the extent that they
17 would include our four recommendations. We think that's
18 appropriate.

19 CHAIRMAN ROBERTI: Very good.

20 During next week's meeting, if you could speak in
21 some detail to the Auditor General's recommendations, that's
22 one of the things we should do next week. We'd appreciate
23 that. Thank you, Mr. Sjoberg.

24 Mr. Davenport.

25 MR. DAVENPORT: Mr. Chairman, thank you very much.

26 We are in a rather awkward position, I think, here
27 today, first of all, in that we share Senator Greene's
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1 concern about needing to have an actuary in place to protect
2 the system and to protect the employees.

3 On the other hand, we're not sure that the state of
4 the law is such that we can be altogether sure that we're
5 going to get an actuary who's going to have the complete
6 capabilities of doing that.

7 So, we don't have anything in the time that we've
8 known about this appointment that we've been able to discover
9 that lead us to believe that Towers, Perrin, Forster & Crosby
10 are unqualified to do this, but we wonder if any firm can
11 meet the qualifications that we have in current law,
12 essentially as Senator Petris raised questions in regard to
13 who is the client here. Who's being served?

14 I served, as you may or may not remember, for seven
15 years with the Industrial Relations Committee, and when you
16 work for somebody, you have to produce the product that they
17 want. And the Governor is the employer here. We wonder if
18 the beneficiaries will be entirely protected under this
19 system.

20 I appreciate hearing what the contractor has had to
21 say here about the high standard that they hope to maintain
22 under this system. I'm not altogether convinced that that
23 standard isn't so high that it might be impossible to
24 maintain.

25 So, our first issue that we raise in the statement
26 here regards the conflict of interest that we would hope you
27 would do what you can in your deliberations to guard against.
28

1 Secondarily, we represent about 60,000 local
2 government employees who are in the PERS system under local
3 agency contracts. And those local agency contracts are all
4 with PERS as the fiduciary. We have some concerns that under
5 the current state of the law, those contracts might indeed be
6 impaired. And again here, it's not as the actuaries have
7 pointed out, the Governor is not the employee of those
8 people, so there is no real relationship of the kind that
9 they may be ordinarily dealing with here. And indeed, we
10 wonder if these kinds of things are going to be able to
11 continue.

12 I think that's the basis of the remarks. We think
13 you have a -- we all have a difficult dilemma here, and we
14 will be, if we have anything to add to that, we'll come to
15 the next hearing.

16 We appreciate very much the opportunity to raise
17 these concerns.

18 CHAIRMAN ROBERTI: Thank you. I guess you're
19 addressing what was the crux of very heated debate during the
20 budget.

21 I would like represent to the firm to also address
22 this point.

23 I guess the status of the law is that the
24 obligations of the law placed on the actuary go to a number
25 of things. The first obligation is to the beneficiaries, but
26 there is also an obligation to the taxpayers, which is
27 indicated in the law as well. So, there's a split charge as
28

1 far as the fiduciary relationship is concerned in the law
2 itself, at least as I interpret the law.

3 So, maybe you'd like to address that right now, or
4 how do you intend to deal with what we all recognize is a
5 complex problem?

6 MR. MACTAS: I'm trying to think of an appropriate
7 analogy and coming up short.

8 It is our clear intention, and for all kinds of
9 good practical reasons, for professional, ethical reasons, we
10 will not make recommendations that we feel will jeopardize
11 the security of member benefits.

12 It makes good business sense to try and deliver
13 what you can for the lowest cost. You decide you need
14 something; you go out and buy it for the lowest cost. But
15 that means you've decided what you're going to buy, and what
16 we're buying here are benefit promises that have been made to
17 members. And we need to make sure that we do our part in
18 making sure that those benefits are responsibly funded.

19 I don't see a conflict with meeting that standard
20 and the objective of minimizing employer costs. One way to
21 minimize employer costs is to do all you can to increase
22 investment return. I don't think that would be inconsistent
23 for the plan investment advisors to have member interests at
24 heart at the same time as they want to minimize employer
25 costs.

26 So, if you say what order do we do this in, we do
27 it in the order of the fiduciary responsibility we have to
28

1 plan members, and at the same time minimize employer costs.

2 But I should point out that our responsibility here
3 is no different than the responsibility that's always been
4 placed on the fiduciary with respect to these matters. It's
5 shifted, but it hasn't changed. It's shifted from the PERS
6 Board to the independent actuary. This responsibility has
7 always been there.

8 SENATOR PETRIS: The problem is, you're one step
9 removed. Under the PERS Board, and it was elected by the
10 beneficiaries, and there was a direct line of accountability
11 that was very sensitive, never far from the minds of those
12 appointed.

13 That's not to say it's going to be far from your
14 mind, but it's a different relationship. I think that's one
15 reason I wanted to give ample time to the employees affected
16 to come in and give us their views. You can understand that.

17 It's a very marked contrast from what we had before
18 in this structure. The duties are the same, but the players
19 aren't.

20 CHAIRMAN ROBERTI: I guess one problem, however,
21 was that the actuary, or in this case it was the PERS Board,
22 set a rate which was paid for by the state or by the
23 taxpayers, which was in essence a benefit for the recipients.

24 MR. DAVENPORT: Thank you very much, Mr. Chairman.
25 We share Senator Petris's concern about the change in the
26 relationship.

27 CHAIRMAN ROBERTI: Thank you.
28

1 MR. LOW: Mr. Chairman and Members, Dave Low with
2 the California School Employees Association.

3 We are breaking new ground in this area with regard
4 to the shift of fiduciary responsibility to an actuary. My
5 understanding is that no other state in the United States has
6 shifted that type of fiduciary responsibility, and the only
7 one I'm aware of where the Governor appoints the actuary is
8 in Minnesota. But the system itself in Minnesota still has
9 the authority to hire their own actuaries, so we're breaking
10 some new ground here.

11 And as was discussed, there's some competing
12 interest between the members of the system and the employers
13 who are paying their share into the system, and that's
14 recognized in the proposal you received. There's two binders
15 of proposals, and I was only able to review that last night.

16 But in going over it, the point of balancing the
17 interests jumped out at me several times. About three or
18 four times in the executive summary, balancing the interests
19 was stated. In one point there's a statement that says:

20 "One has to recognize the unique
21 characteristics and, after
22 appropriate consultation with
23 interested parties, represents an
24 approximate balance among the often
25 competing influences."

26 And those competing influences, we see, as minimizing the
27 employer contributions versus the benefits of the members of
28

1 the system.

2 I would point out that the case law in this area
3 states that the fiduciary has a responsibility to be biased
4 towards the pension system itself. And that means that the
5 beneficiaries of the system have to be the overriding
6 priority. There's been even more recent case law on that
7 issue, basically, relegating the offsetting interest of
8 reducing employer contributions to a very low level in the
9 Sacramento City Firefighters' case that was recently decided.

10 The other point I would like to just bring out is
11 that one of the main considerations, I believe, that was
12 brought to the process was the fiduciary responsibility as it
13 relates to the liability of the firms that are applying for
14 the contract. And I was reviewing the chief counsel from DPA
15 letter that went out to them, and it basically states that,
16 with respect to that responsibility, that:

17 "Determinations made by the actuary
18 that impact upon the employer
19 contribution rates may be subject to
20 challenge by either the participant
21 beneficiaries as being too low, or
22 by the employers as being too high.
23 With respect to the former, however,
24 the employer bears the
25 responsibility for making
26 appropriate payments to PERS. With
27 respect to the latter, if the
28

1 employers had paid too much money
2 into the PERS, this could be
3 remedied by a credit. Under either
4 scenario, the actuary would not
5 appear to bear the direct risk of
6 loss."

7 I've reviewed this statement with our counsel, and
8 we differ with this opinion. We think that this is
9 absolutely new ground that we're breaking here. And that if
10 there was a lawsuit filed, and we don't think that the
11 employer would simply bear all the risk because we have
12 shifted not just the actuary duties outside of PERS, but the
13 fiduciary responsibility to the actuary, which is totally
14 unprecedented. And we feel that this is a major
15 consideration, and we would want to make sure that the
16 actuaries had the ability to deal with that situation should
17 they be sued. In a \$64 billion system, the liabilities could
18 be extremely high and the risk to the employees very high as
19 well.

20 CHAIRMAN ROBERTI: Thank you very much.

21 MR. DAVILA: Thank you, Mr. Chairman and Members,
22 my name is Al Davila. I'm here to represent six public
23 employee organizations, numbering about 70,000 members.
24 Those organizations are: the California Association of
25 Highway Patrolmen; the State Engineers; State Attorneys; and
26 State Scientists; as well as the California Public Employees
27 Retirement Association; and the Forestry Employees
28

1 Association.

2 We have -- it's a matter of public record that we
3 have been opposed to AB 702 from the inception. We believe
4 that the issue of the actuarial transfer of actuarial
5 responsibilities is a very important issue and a very
6 worrisome issue for us.

7 We would like to see the confirmation postponed.
8 The way I understand it, the rates that are in place now are
9 good until June of next year. And we do have a lawsuit that
10 might negate all of the work that you're doing here today.
11 And it might be a little more difficult to try and undo what
12 we've done here.

13 We would -- we haven't had a chance to see the
14 material that was alluded to here earlier, and we'd like a
15 chance to do that.

16 We would just ask that you look at this closely and
17 maybe put off the confirmation. Thank you.

18 CHAIRMAN ROBERTI: Thank you, Mr. Davila.

19 Please come forward.

20 MR. ZENZ: Mr. Chairman and Members, Bob Zenz,
21 representing California State Employees Association.

22 We'd just like to echo the comments that have been
23 made here. We won't debate it here. We appreciate the fact
24 that we've raised these points; you're raising these points.
25 We appreciate your looking into them.

26 We, too, believe that delaying this somewhat in
27 accordance with 702, it had a provision in there to allow
28

1 this to go until the 6th or 7th day of January. We don't
2 think anything's going to be damaged by waiting.

3 We're not impugning the integrity of this firm. We
4 haven't found anything, other than top-drawer kind of
5 approach from this firm, but we think the process is being
6 accelerated, and we don't think that's necessary.

7 We represent a lot of people. We have a court case
8 going. We think just a little more time might solve a lot of
9 problems for everyone.

10 I do have a brief letter for each Member that we've
11 just prepared.

12 Thank you very much.

13 CHAIRMAN ROBERTI: Thank you.

14 MR. REWERTS: My name is Dean Rewerts. I'm the
15 Legislative Chairman for the California Union of Safety
16 Employees, which is exclusively a state employee union.

17 One of the things -- and we just received this
18 document today -- one of the things that I have to echo from
19 TPF&C's own document is a statement that's meant [sic], that
20 says:

21 "Of particular concern is the level
22 of PERS assets and associated state
23 employer contributions."

24 A little further down on the same page, Page i, it says:

25 "The actuary under contract to the
26 Governor is charged with striking
27 the right balance through the choice
28

1 of appropriate actuarial methodology
2 between protecting the rights of
3 PERS members and the fiscal
4 realities under which the state
5 government must operate."

6 Quite frankly, it sounds like there is a chance
7 here for the actuary to start setting policy rather than
8 doing just recommendations. And in light of that, since this
9 is a major, major change in the way this system is going to
10 operate, we think that taking the time to do a careful review
11 of this is well worth the slight delay.

12 Again, we are a party to the lawsuit that's been
13 filed. We expect that at least part of AB 702 is going to be
14 overturned and, perhaps in that light, this matter might be
15 put over until January.

16 CHAIRMAN ROBERTI: Thank you very much.

17 MS. KREBS: Mr. Chairman, Committee Members, my
18 name is Wilma Krebs. I represent the California State
19 University Retired Faculty Association.

20 I was disturbed to hear the gentleman from TPF&C
21 talk about a dual fiduciary responsibility. It seems clear
22 to us that the California Constitution, Article XVI, Section
23 17(a) states that the PERS trust funds must be used for the
24 exclusive benefit of the beneficiaries.

25 It's true that Section 17(b) adds a duty to
26 minimize employer contributions, but this additional duty
27 given to the administrators of PERS is certainly not on the
28

1 same level as the exclusive benefit rule.

2 I am also a little disturbed to hear talk about an
3 independent actuary. This actuary can be fired by the
4 Governor without cause with 30 days' notice. His decisions
5 are not subject to public review and comment, and it appears
6 to us that this is a considerable loss of independence of
7 actuaries.

8 Furthermore, our highly respected Allan Post has
9 stated that it is normal practice for an actuary serving a
10 retirement system to be appointed by a board of
11 administration or other independent trustee of the system,
12 and to be reviewed by that board. We lack review. We lack
13 public comment.

14 Thank you.

15 CHAIRMAN ROBERTI: Thank you very much.

16 Is there anyone else here?

17 MS. NEUWALD: Senator Roberti, Members of the Rules
18 Committee, Karen Neuwald with the Department of Personnel
19 Administration.

20 I'm here in support of the actuary nominee. My
21 remarks are brief.

22 Basically, we would urge a speedy confirmation of
23 the actuaries nominated by the Governor in AB 702. I know a
24 lot of the debate here centered still on the debate that
25 centered over the passage of AB 702; however, with this
26 nomination, basically we are trying to bring to you what AB
27 702 required, which is the nomination of the actuary and
28

1 confirmation by both the Senate and the Assembly.

2 Just briefly, our concern, I guess, on the
3 speedy confirmation, where we disagree with some of the
4 previous speakers, in the law, AB 702 even specifically had
5 some requirements that required the actuary to do certain
6 activities and reports, including setting employer
7 contributions by December 1st. So, we feel it is imperative
8 for the Committee to take action so that some of the
9 requirements of AB 702 can be met.

10 The only other comment I would make is, some of the
11 debate about the fiduciary responsibilities, and just to
12 emphasize that the Article XVI, Section 17 of the
13 Constitution was not changed as far as I could, in my reading
14 of AB 702. And that the responsibilities were there with
15 PERS and now have been shifted to the actuary, but the same
16 responsibilities were always upon PERS Board also.

17 CHAIRMAN ROBERTI: Thank you.

18 Anybody else?

19 I tend to agree with the last witness myself. I
20 appreciate all the arguments for a delay; however, the
21 contribution rate does have an impact on the budget. Waiting
22 until, I guess, the 13th of January starts getting very late
23 into the budget season.

24 So, that's just an observation. We'll take a vote
25 on it next week as far as confirmation of the actuary is
26 concerned.

27 Why don't we leave it at that and see you next
28

1 week.

2 MR. MACTAS: Thank you.

3 SENATOR C. GREENE: Senator Roberti, a couple of
4 questions.

5 In the Auditor General's report, some of those
6 things should be done in the contract before confirmation.

7 CHAIRMAN ROBERTI: Yes.

8 We'll look forward to seeing you with any
9 recommendations you have to us.

10 Why don't we take a break for five minutes, and
11 then we'll hear Mr. Covitz.

12 [Thereupon a brief recess was taken.]

13 CHAIRMAN ROBERTI: The Committee will come to
14 order. The next item on the agenda is the nomination of Carl
15 D. Covitz, Secretary of the Business, Transportation and
16 Housing Agency, being escorted here by our colleague Senator
17 Davis.

18 Senator, we'll let you start.

19 SENATOR DAVIS: Thank you very much.

20 It's an honor and a privilege to come here and
21 recommend the confirmation of Carl Covitz. Governors don't
22 always appoint people with appreciable abilities. Sometimes
23 they find political cripples around that they give fine
24 appointments to.

25 And I'm glad, because Carl, since he came to our
26 L.A. community in the early '70s, has demonstrated his
27 dynamic ability to get things done. He came here from New
28

1 York where he had a Senior Vice President's position with
2 ITT, and he served in the end of the Reagan administration in
3 HUD. The mistake they made was not making him Director; they
4 would have avoided a lot of problems probably at that point.

5 In Los Angeles, because of his demonstrated ability
6 to develop a national development firm, my police classmate,
7 Tom Bradley, when he had real problems in his housing
8 component of city government, called on Carl to come in and
9 clean the mess up, which he did. To show that Carl doesn't
10 lean necessarily to helping Democrats, it just happened that
11 Tom happened to be Mayor of L.A. He would have done it for a
12 Republican, I'm sure.

13 When a Republican Governor, Pete Wilson, wanted
14 someone to really breathe some life into the business
15 industry, housing industry, and transportation, he made a
16 very logical choice in bringing Carl in for this position.

17 I asked Carl when he first accepted it how he was
18 able to do that, and he said he has a very long-suffering and
19 understanding business partner who allowed him the leisure of
20 coming in and helping the state government.

21 So, I think we're very fortunate to have Carl
22 Covitz as our Secretary of Business, Transportation and
23 Housing. And his commitment to housing is, I don't think,
24 can be second- guessed by anyone.

25 I have a letter here. I'm not going to try to read
26 it into the record, but hand it to the Sergeant and ask that
27 it be placed in the record of this hearing. One is from Eli
28

1 Broad of Broad and Coffman and Board Insurance, and the other
2 one is from Tom Bradley. Both letters extolling the virtues
3 of Carl for this wonderful job.

4 CHAIRMAN ROBERTI: Very good. Mr. Broad called me
5 yesterday.

6 Mr. Covitz, we'll ask you to make a comment as to
7 why you feel you're qualified to assume this position.

8 MR. COVITZ: Mr. Chairman and Members of the
9 Committee, first to Senator Davis, thank you for those kinds
10 words.

11 I'd like to thank the Committee for giving me the
12 opportunity this afternoon to outline some of my thoughts and
13 ideas as to what I see ahead for the State of California in
14 the area of business, transportation and housing.

15 December of last year was almost two years since I
16 had returned to Los Angeles from federal public service. I
17 was again running my own business, and at the same time had
18 accepted the positions of Chairman of the City of Los Angeles
19 Housing Authority and Chairman of the Board of the Federal
20 Home Loan Bank of San Francisco, and my plate was full at
21 that time. So, when Pete Wilson asked me if I would consider
22 serving in Sacramento as Secretary of Business,
23 Transportation and Housing, I was flattered, but I didn't see
24 how I could take on yet another public service job.

25 The Governor was persistent and persuasive, and the
26 main reason I finally accepted this appointment is because,
27 apart from my firm belief in the vision, capabilities and
28

1 determination of Pete Wilson, I do believe there is a great
2 deal this state can do to regain its competitive advantage
3 and return to a healthy economy, to produce a first-class
4 transportation system for the 21st Century, and to provide
5 affordable housing and community development for the citizens
6 of California.

7 I know there are people who have wondered why I've
8 become involved in federal, local and state public service
9 over the last 11 years, and the answer is simple. I have
10 been a product of the California dream. I arrived here 18
11 years ago with no job and my wife was pregnant. Since then,
12 I have found my business success in a great country and in an
13 exceptional state.

14 I believe there's a time in a man's life when, if
15 he can, he puts something back into the system, and this is
16 my time. I came in 1973, seeking opportunity in the real
17 estate market in what I thought was a unique area. I came to
18 the state to begin a business, to raise a family. My wife
19 and I knew virtually no one in California. But what I did
20 know was that if I ever was going to be my own boss and have
21 my own company, that this was the time and California was the
22 place.

23 However, as a small businessman starting in the
24 building industry, I arrived in California just in time to
25 experience some pretty rough cycles of economic recession.
26 But I was fortunate at the time, and I had lenders who stood
27 by me during this shaky period, and the economy improved.
28

1 Today I am in a position where I can keep the same
2 economy on track for other small business people coming to
3 California with a dream and a goal, for corporate
4 organizations that belief in California and want to do
5 business here.

6 I bring to this job managerial and corporate
7 business skills in housing, banking and commerce that I would
8 like to apply to the Wilson agenda. The challenge before us
9 all today is to keep the California economy vibrant and
10 competitive. We need to be responsive to the economics of
11 people in growth, housing and transportation demands. In
12 order to keep California's business climate competitive and
13 increase our job growth rate, we have intensified our
14 business retention and attraction efforts. Keeping jobs in
15 California will be -- will continue to be one of our highest
16 priorities.

17 Providing affordable housing is one of the keys to
18 maintaining and improving California's economic well being.
19 High housing prices contribute greatly to the cost of doing
20 business in this state. They contribute to traffic
21 congestion and air pollution because of the necessary longer
22 commute times for the less expensive area homes.

23 Transportation is, of course, an issue of immense
24 importance to the future of California. Due to a growth rate
25 of almost 2200 people a day, California adds over a million
26 cars to its roadways every year. We simply cannot expand
27 enough to absorb those new numbers. In a race between new
28

1 freeways and new automobiles, the new automobiles always win.

2 Meeting California's transportation challenge calls
3 for a balanced approach that takes people out of single
4 occupant vehicles and puts them into rail cars, car pools,
5 telecommuting centers, and bus networks.

6 We're laying the groundwork for the future
7 challenges that await California, and I'd be proud to be a
8 part of it.

9 Mr. Chairman, thank you. I'd be glad to take your
10 questions.

11 CHAIRMAN ROBERTI: Thank you very much, Mr. Covitz.

12 Let me ask you a few questions I have before me
13 that I think we really must ask, and that is regarding
14 problems with HUD when you were Under Secretary.

15 I take it you were in charge of the day-to-day
16 operations of HUD?

17 MR. COVITZ: For the most part.

18 CHAIRMAN ROBERTI: For the most part?

19 MR. COVITZ: My responsibilities as Under Secretary
20 were dependent upon those assignment received by the
21 Secretary, but for the most part they were the day-to-day
22 operations of the Department.

23 CHAIRMAN ROBERTI: I understand most of the
24 problems that HUD had revolved around the allocations that
25 were made by the Department.

26 To what extent did you have any decision-making in
27 that?
28

1 MR. COVITZ: Yes, sir.

2 The focus of the attention of the last few years on
3 HUD had been primarily one program, Mod Rehabs Section-8. A
4 bit of background might be appropriate.

5 It was a fully discretionary program, meaning that
6 the Secretary had the absolute determination of awards of
7 those grants. And there was during my tenure, perhaps, two
8 or three meetings that I participated in which those grants
9 were discussed.

10 There was at the time, the recommendation would
11 surface from the Department of Housing -- you must understand
12 that in the federal government, the terminology's a little
13 bit different. The large organization is called the
14 Department and the smaller organization is called the Agency;
15 it's the reverse as it is here. That was the FHA
16 organization, and it was headed by an Assistant Secretary of
17 Housing. The Assistant Secretary of Housing would bring to
18 the meeting, of which I was a member, a recommendation for
19 allocation to public housing authorities. We would review
20 it, pass it on to the Secretary, and it was his final
21 determination. I did participate in those meetings.

22 I must say, however, that I was uncomfortable with
23 the process, and I had initiated a program for change in that
24 process. The change was begun at the end of the
25 administration, and my understanding is that Secretary Kemp,
26 in the subsequent administration, decided that the program
27 was inappropriate and had canceled it.
28

1 CHAIRMAN ROBERTI: I've been given some
2 information, I don't know how correct it is, that Mr. Pierce
3 on occasion blamed you for some of the alleged inappropriate
4 activity in the granting of allocations. Am I correct or --

5 MR. COVITZ: Mr. Chairman, I don't think so. I
6 have never been accused of any wrongdoing in that process. I
7 have never been implicated in any way in that process. Even
8 in the judicial proceedings that are under way as well as the
9 Congressional committee hearings --

10 CHAIRMAN ROBERTI: You've not been named, and I
11 think the record should reflect that.

12 MR. COVITZ: Right, I was never a part of that in
13 any way.

14 CHAIRMAN ROBERTI: Your making recommendations of a
15 change in the process, do you have any documentation to that
16 effect, or something along those lines?

17 MR. COVITZ: I believe the record shows -- and I
18 did not bring with me any files from my days at HUD -- but I
19 believe that the record shows of the Lantos subcommittee
20 hearings in Washington that there was change recommended, and
21 that I had been the motivating force behind that change.

22 Now, you should know that I don't believe the
23 change was ultimately implemented. I was at the Department
24 approximately a year and a half, and during that time I
25 participated in perhaps two or three of those meetings. And
26 consequently, it was after the first or second meeting that I
27 felt there -- it would be appropriate to make a change and
28

1 had brought the groups together that would deal with it. I
2 don't believe that the change had been fully implemented by
3 the time I left.

4 CHAIRMAN ROBERTI: What did you call it, the Rehab.
5 program?

6 MR. COVITZ: Yes, Mod Rehab, it was referred to,
7 Section-8 Mod Rehab.

8 CHAIRMAN ROBERTI: It had its own agency or --

9 MR. COVITZ: Department, the Federal Housing
10 Agency, FHA, would make the recommendation to the Secretary.

11 CHAIRMAN ROBERTI: And they would make the
12 recommendation directly to the Secretary.

13 MR. COVITZ: They would make the recommendation to
14 a committee, of which I was one of three, and the committee
15 would make the recommendation to the Secretary.

16 I must say that the committee understood that it
17 was the Secretary's discretion and believed that he would
18 ultimately decide. We were never informed as a committee
19 what the decision was and how the awards were made. I was
20 never aware of the ultimate determination of the awards.

21 CHAIRMAN ROBERTI: And you have never been
22 interviewed by any investigatory body regarding this
23 committee?

24 MR. COVITZ: Yes, I've been interviewed, but staff
25 of Congressman Lantos did talk to me, but I was never called
26 to testify. They just asked me what had happened, what the
27 process was.
28

1 CHAIRMAN ROBERTI: In regard to another matter,
2 I've been told that in your past management record at HUD --
3 let me rephrase that. What exactly do we mean when we say
4 day-to-day operations of the Department?

5 MR. COVITZ: Probably best described as, I would be
6 involved with any particular policy or day-to-day operation
7 that transcended one department or another. For instance, if
8 there was an issue that had both the involvement of FHA and
9 GINNIE MAE, but HUD organization, then I would moderate,
10 intervene, or supervise in some fashion. And as well, I was
11 given specific assignments over time to be responsible for
12 particular areas.

13 CHAIRMAN ROBERTI: Very good. I might have some
14 questions later, but the other Members may want to ask
15 something at this juncture.

16 Senator Kopp has been asked to join the Committee
17 as a courtesy we extend.

18 SENATOR KOPP: Thank you, Mr. Chairman.

19 Let me lay a predicate, Mr. Covitz, for my
20 questions, which deal with about five or six transportation
21 policy areas, and only transportation, because, as you know,
22 that's my particular sphere of interest. And business and
23 housing may be one thing, but transportation, in my strong
24 view, as you know, is another thing.

25 And what I see is a period of about eight months,
26 almost exactly eight months since your nomination to be
27 Secretary of this Agency, and when I see clearly is a lack of
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1 attention to transportation issues that reminds me of the
2 Jerry Brown days. And I say that regretfully, because,
3 having known him since he was in high school, I was one of
4 his spirited supporters, and then was just dismayed as a
5 member of a county board of supervisors to observe what
6 happened to Caltrans under his Caltrans Director.

7 And as a result of the lack of attention, what I
8 also see is that the California Transportation Commission has
9 simply become the de facto decision maker for transportation,
10 which is almost exactly what occurred under Jerry Brown.

11 I share your views about the capabilities and
12 vision of Governor Pete Wilson, but at a time which follows
13 immediately after the voters of California gave their
14 imprimatur to spending as much as \$18 1/2 billion over the
15 next nine years, there's no follow through. And there's been
16 eight months to do it.

17 Let me start with Section 163 of the Streets and
18 Highways Code, which requires that a six-year transportation
19 funding plan be submitted to the Legislature at the same time
20 as the proposed budget is submitted. I haven't seen that
21 plan. My question is: where is that plan? Why wasn't it
22 submitted this year?

23 MR. COVITZ: Senator Kopp, perhaps I should first
24 address your earlier comment.

25 I'd like to share with you that transportation is
26 perhaps a priority, if not the priority, of the Agency. We
27 took the time, and appropriately so, I think, to search the
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1 country for the very best person we could find as Director of
2 Caltrans, and interviewed more than a hundred candidates,
3 having selected finally General Jim van Loben Sels. That did
4 take time, and perhaps there might be criticism today of the
5 delay in undertaking that search, but I think the State of
6 California and Caltrans will be well-served by having done
7 that and being able to persuade General van Loben Sels to
8 join us.

9 There are other areas where we have worked
10 strenuously to maintain the priority of transportation
11 policy. As an example, you may recall in the original budget
12 of Governor Wilson, there was a limit on 108 and 116 funding
13 to the amount of \$585 million. During that time and in the
14 last budget negotiation, I prevailed upon the Governor, after
15 a good deal of discussion that the full amount of required
16 spending in 108 and 116 was absolutely essential. And in the
17 budget negotiation that recently was completed, there have
18 been set aside funds for the full implementation of the 108
19 and 116 funding.

20 In terms of the required -- and I believe you're
21 referring to the 1992 STIP process -- we are planning at
22 Caltrans to continue that STIP process. There is currently
23 \$1.6 billion available for spending, and I think that it's
24 important that we proceed with that.

25 SENATOR KOPP: Well, the STIP is separate. The
26 STIP is a seven-year expenditure plan.

27 MR. COVITZ: Yes.
28

1 SENATOR KOPP: Section 163 of the Streets and
2 Highways Code emanates from 1987 legislation, as I recall.
3 That requires a six-year funding plan to be submitted
4 concomitantly with the budget. It wasn't done.

5 As Secretary of the Agency, which includes
6 transportation, I ask you to explain why it wasn't, and what
7 the status of it is. When will it be submitted?

8 MR. COVITZ: Yes.

9 I don't have a precise answer, Senator, and I'd be
10 more than happy to get back to you as soon as possible on
11 that.

12 SENATOR KOPP: You know that I've corresponded, and
13 I must advise you that it has taken time, more time than it
14 should, for answers to be given to letters about the seismic
15 safety retrofit requirements. The Department of
16 Transportation, under legislation enacted in 1990, at the end
17 of '89, after the earthquake, was required to investigate all
18 the bridges on state highways and evaluate which ones need
19 seismic safety retrofit, need to be strengthened in case of
20 earthquakes. And that report was finished on time, January
21 1st. It wasn't released for two months, which surprised me.
22 I still don't know the reason it wasn't released immediately,
23 but it was released about March 1st.

24 It found that there were some 700 or more bridges
25 on state highways which needed strengthening. Estimated
26 cost, almost a billion dollars. The billion dollars is not
27 provided for in the transportation package adopted by the
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1 Legislature and the Governor in 1989 [sic]. There's no money
2 in the funds that will be generated from the increased gas
3 taxes.

4 We call it popularly the Proposition 111 money,
5 although Prop. 111 amended the Constitution. That's my
6 reference to the imprimatur of the voters on spending the
7 additional tax money.

8 There still is no plan to pay for that
9 strengthening which is occurring right now. Money has to
10 come out of the state highway account. A couple of bills
11 pending that I think are short-sighted, deficient, because
12 they contain no way of providing money for what's called
13 short-term borrowing, which means paper for 18 months to five
14 years, and it's a shell game in my opinion. It's a shell
15 game which the people of California won't understand, but the
16 bill is going to come in. And I'd like to to know, without
17 all the glittering generalities, what is the plan to pay for
18 that almost billion dollars of needed repairs on bridges on
19 state highways, let alone the second part of the question,
20 the additional \$3 1/2 billion for several thousand additional
21 bridges that the Department should be -- says should be
22 strengthened over the next 10 years?

23 MR. COVITZ: Yes.

24 Senator, that's a good question, and I'd like to
25 answer it in a number of ways.

26 I understand by legislative mandate that seismic
27 retrofit is a priority. And consequently, that will be the
28

1 first funding from the highway bill.

2 I have had a number of conversations with the
3 Governor and his staff regarding alternative direction and
4 perhaps source of funding. And I know you met with the
5 Governor last Thursday. I'm sorry I couldn't join you. I
6 was taking my son to college on that day.

7 SENATOR KOPP: I hope it was the right college.

8 MR. COVITZ: Of course it was.

9 SENATOR KOPP: Either Dartmouth or Villanova.

10 MR. COVITZ: Right city; right, Senator Craven?

11 SENATOR CRAVEN: He's going to Penn?

12 MR. COVITZ: Right.

13 But there is no doubt that seismic retrofit is the
14 priority. It is a legislative priority, and it will continue
15 to be. So as of today, the money will come from the highway
16 fund to do that.

17 The delay on seismic retrofit has occurred as a
18 result of the fact that we are forging new ground in seismic
19 retrofit. There was never an on-the-shelf program available
20 to deal with the problems of earthquake and strengthening
21 those highways and bridges that we have available. And as a
22 part of that process, there was created a peer review group,
23 and its purpose was to evaluate all the ideas and suggestions
24 and come up with the very best solution to deal with seismic
25 retrofit.

26 There was some level of controversy, but I believe
27 the group has finally come together in a consensus as the
28

1 best means to deal with the issue. So, in terms of where do
2 we move from there, there is no doubt, seismic retrofit is a
3 priority. It is now -- it will now be funded from the
4 highway fund, and we are considering alternative sources and
5 evaluating alternative sources of funding as well, including
6 your own legislative recommendations.

7 SENATOR KOPP: My legislative recommendation is a
8 bill, 868, to increase the gas tax 2 pennies for 30 months to
9 produce that money.

10 And the delay reasons are well known, especially to
11 us in the Bay Area. And I've defended the Department time
12 and again, although it becomes increasingly difficult when
13 you have people clamoring for the re-opening of 280, which is
14 in the heart of the district I represent.

15 But I'm talking about cold, hard cash. And it's
16 evaluation, evaluation, evaluation. There's no trick to
17 this. There has to be money. And borrowing money for 18
18 months or 3 years means you've got to pay it back. When you
19 pay it back, you've got to pay it with interest. And the
20 interest is going to come right out of the hide of highway
21 projects that are already part of the state transportation
22 improvement program.

23 In political fairs, it's too easy to put something
24 off until someone else's watch occurs. And I'm not going
25 anyplace. I hope I'm going to be here for a while. I'm
26 going to keep crying the alarm.

27 What I'd like to get is some specific plan as to
28

1 where the money's going to come from. If the two penny gas
2 tax isn't acceptable policy or the best policy in your
3 judgment, what is?

4 MR. COVITZ: Well, you and I have had this
5 conversation, and I know that it is a priority not only of
6 the Agency but also of the Governor. And it is -- it will be
7 administration policy, and I would say in short order we will
8 be able to come to you with a suggestion as to how to deal
9 with it.

10 Right now, it is continuing. Seismic retrofit is a
11 priority, and it is being paid for out of the highway fund.
12 It is not being delayed.

13 SENATOR KOPP: Let me ask you about the STIP, then.
14 You mentioned the pending Federal Transportation Act. The
15 Senate has passed a version and the House has passed a
16 version.

17 MR. COVITZ: No, the House is delayed.

18 SENATOR KOPP: The House is till in the mock-up
19 stage, or whatever.

20 We can't predict what the eventuality will be. We,
21 meaning the decision makers of the State of California, have
22 a bond issue on the ballot for rail bonds, another billion
23 dollars, November of next year, just about 15 months from
24 now.

25 The Commission, CTC, is planning to adopt a STIP
26 early next year, as you know. That STIP, as far as I can
27 see, is based upon hypothetical assumptions. And as I said,
28

1 the STIP is for seven years; we know that. So, that will
2 commit a spending plan for seven years, which incidentally
3 goes over into the next term of the Governor.

4 Some people have suggested -- I'm not ready to
5 suggest this quite yet -- that the adoption of that STIP be
6 deferred until you don't have to rely on hypothetical
7 assumptions.

8 Is the CTC simply going to go ahead and make that
9 decision for the administration, for the Legislature, the
10 State of California?

11 MR. COVITZ: May I answer it?

12 SENATOR KOPP: The question implies, are you going
13 to let them do that?

14 MR. COVITZ: Senator, I can't speak for the CTC. I
15 can speak for the administration.

16 And perhaps I might preface this by saying that the
17 reauthorization of the Federal Highway Bill is, perhaps, the
18 most significant federal legislation affecting the State of
19 California for the next 10 years. I recognize it's only a
20 five-year bill, but its impact is enormous.

21 And I personally have been to Washington on two
22 occasions, one of which you read about in the newspaper with
23 a car and driver that I paid for myself. But I was there
24 lobbying because it is so critical to the state. I met with
25 all of the California delegation that is involved in it on
26 the committee or the subcommittee. I brought together the
27 private sector in Washington who had any effect -- who would
28

1 have any effect on the reauthorization of the Highway Bill.

2 And I believe that we are moving forward in a
3 program that will be very much in the best interests of the
4 State of California. I'm very optimistic.

5 In addition to my being there, we have assigned
6 full-time legislative staff from Caltrans, and we have also
7 hired a lobbying firm.

8 Now, having said that, and in anticipation of a
9 benefit for the State of California in the event that the
10 Highway Bill is passed and signed by the President, I believe
11 that we have to move forward at this point with the STIP
12 process, because the unknown creates a serious problem. If
13 nothing comes of the Highway Bill, there is a possibility
14 that the Federal Highway Bill will not pass, will not get out
15 of the House, and there'll be nothing more than a continuing
16 authorization. On that basis, we have to be prepared to move
17 ahead with the billion-six that we have available in
18 transportation funds, and the only way to do that is in the
19 STIP process.

20 So, at this point we feel that the appropriate
21 approach is to continue with the STIP process. We -- as you
22 know, it's not -- I believe it's not approved until late in
23 the year, and we very well may know in September, the end of
24 September, when Congress reconvenes, or perhaps October,
25 precisely what will happen with the federal legislation.

26 I hope that addresses your question.

27 SENATOR KOPP: Well, would you recommend -- this
28

1 was done before -- would you recommend that legislation be in
2 place that would authorize CTC to defer adoption of the STIP,
3 because at least if our schedule is adhered to, we're going
4 to be adjourned a week from Friday. I wouldn't be sure, and
5 you're not sure, of enactment of the Federal Transportation
6 Act by that time or even by the end of September. It may be
7 October.

8 MR. COVITZ: Yes.

9 SENATOR KOPP: November.

10 MR. COVITZ: Yes, we face that. We do face that
11 uncertainty.

12 SENATOR KOPP: Would you recommend such
13 legislation?

14 MR. COVITZ: My recommendation would be to proceed
15 with the STIP and attempt to evaluate with some degree of
16 flexibility the federal legislation as it proceeds when
17 Congress reconvenes.

18 SENATOR KOPP: And not enact legislation that would
19 authorize CTC to defer adoption of the STIP?

20 MR. COVITZ: Not at this time, because at risk is a
21 billion-six of available funding for transportation projects
22 if we defer.

23 SENATOR KOPP: You've mentioned the fact that you
24 spend time lobbying in Washington on the Federal
25 Transportation Act.

26 It's also true that that at the same time you and
27 Carl Williams of the Department were there, that there were
28

1 three members of the CTC and a staff member there, lobbying
2 for a different version of the Transportation Act; right?

3 MR. COVITZ: Well, I can't speak for the CTC.

4 SENATOR KOPP: Well, but as a matter of fact, isn't
5 that what occurred?

6 MR. COVITZ: I'm not sure. I think that -- we have
7 met with the CTC, with the staff and the members. And my
8 understanding is we are now very much in agreement as to the
9 California position, the united California position, for the
10 reauthorization act.

11 SENATOR KOPP: Well, you weren't in agreement then,
12 because they had a different position, a position which I
13 think can be accurately or fairly characterized as leaning
14 more towards highway building.

15 The question presented is, who speaks for
16 California? When you're back there, you're lobbying with a
17 couple of people this way; they're lobbying that way. The
18 taxpayers, of course, are paying for both sets, and the
19 person who's the object of the lobbying is looking at two
20 different positions.

21 MR. COVITZ: Yes.

22 Again, Senator Kopp, I can't -- it's difficult for
23 me to speak for the CTC. I believe today that we are in
24 agreement on all significant issues affecting California in
25 the reauthorization bill.

26 SENATOR KOPP: Has that been memorialized in
27 writing?
28

1 MR. COVITZ: Well, I have met with the CTC. I've
2 met with the Chairman, and there was a meeting just last week
3 which I attended dealing with the status of it. And I do
4 believe we're in agreement.

5 We are looking for --

6 SENATOR KOPP: Is there a written memorialization
7 of that agreement?

8 MR. COVITZ: No, I have not seen it.

9 SENATOR KOPP: Neither have I, and I'd like to know
10 what it is that represents California's position, supposedly.

11 MR. COVITZ: We'd be more than happy to provide a
12 briefing for you, Senator.

13 SENATOR KOPP: Okay. I think it ought to be made
14 available in writing so that other people, besides 120
15 Legislators and other insiders, can have an opportunity to
16 evaluate it.

17 MR. COVITZ: Well, I might add, there has been
18 extensive documentation of the California position,
19 extensive. It was the means by which I -- it was the source
20 of my information for dealing in the lobbying effort. And it
21 is my understanding, because I have discussed it with the
22 California Transportation Commission, with the staff and with
23 the members, it is my understanding that they concur with
24 that.

25 SENATOR KOPP: Well, I'd like to see, as I say, a
26 written memorialization of whatever that agreement is. I
27 certainly want to compare it to the resolution, the policy,
28

1 that was adopted by this body, the State Senate.

2 My questions obviously contain in them, speaking
3 for themselves, what I consider a rather bizarre spectacle
4 that did in fact occur: CTC lobbying for one position; you
5 and Mr. Williams lobbying for another.

6 Let me talk to you about 108 and 116, which you
7 mentioned. Last January I sent the Governor a memorandum in
8 which I earnestly suggested that here is a situation in which
9 almost \$3 billion of debt has been incurred for purposes of
10 expenditures on rail capital improvements. The two
11 railroads, Southern Pacific and Santa Fe, have been
12 aggressively pursuing local entities, negotiating contracts,
13 locality to locality, to sell their rights away.

14 I suggested, I recommended, that the state -- this
15 is state money. It's taxpayers' money, but it's under the
16 purview of the state. The state is responsible for the
17 proper expenditure of it -- that the state take over the
18 negotiating with both of those railroads.

19 It hasn't been done. I've never even received an
20 official response to that suggestion.

21 In the meantime, I've had about 25 cities in
22 Southern California write me about having a hearing on how
23 Santa Fe's holding them up. I pointed out in that
24 memorandum, as you know, that there is economy of scale to be
25 achieved over and above the fact that it's the state's
26 responsibility for the spending of that taxpayers' money.
27
28

1 Why hasn't that been acted on? What's wrong with
2 that?

3 MR. COVITZ: Well, Senator Kopp, it's hard for me
4 to explain why you may not have received an answer from
5 Governor Wilson, but I can tell you --

6 SENATOR KOPP: I sent it to Governor Wilson. I
7 expect him to give it to you and say, "Take charge of this."
8 I've sent letters that have been responded to by Mr. Pierce,
9 for example, or I sent a letter to you that was responded to
10 by him. That's why you have a delegation of responsibility.

11 I'd like to know on the merits, why shouldn't the
12 state, which has the legal responsibility, assume all these
13 negotiations rather than letting the railroad companies just
14 pick off these local agencies? They have little incentive to
15 drive a hard bargain; it's money coming from the state.

16 MR. COVITZ: Yes, it is money coming from the
17 state, and it is also their own funds that is supplement the
18 state funds.

19 We feel that at this point, it's appropriate for
20 the local communities to continue the negotiation, and I have
21 asked the Caltrans people to evaluate those negotiations. I
22 know that you feel strongly that the activities in the San
23 Francisco area pertaining to the Southern Pacific are --
24 should be subject to re-evaluation, and that is currently
25 underway by Caltrans. We will be sharing that information
26 with the CTC, who has the ultimate responsibility of
27 determining whether the requests from the local communities
28

1 are appropriate.

2 So, whereas I might not agree with the suggestion
3 that it should be state negotiation, I certainly do concur
4 with you that it's appropriate for re-evaluation of some of
5 these negotiated purchase agreements.

6 SENATOR KOPP: What do you have as a plan to meet
7 the new emphasis on rail transit? Do have such a plan?

8 MR. COVITZ: Yes, we do. And I think it's embodied
9 in the passage of 108 and 116.

10 I personally feel that in most of the urban areas,
11 the freeway systems are saturated. I do not see
12 opportunities for expansion of freeways, and I think it is
13 our challenge to utilize alternative forms of transportation.
14 And I see that primarily in transit systems.

15 That is my personal opinion. That is a policy that
16 we are -- that we are directing Caltrans. And I would say
17 that, for the most part in many areas, in spite of the
18 commitments in the past to the freeway system, that rail
19 transit, light rail transit, will be the priority in the
20 districts. I believe it's happening in Southern California
21 and soon to happen in Northern California.

22 SENATOR KOPP: Well, let me just point out that 108
23 and 116 don't embody a plan. All they do is approve the
24 expenditure of money, but the state has to have a plan. The
25 Department has to have it; your Agency has to have it --

26 MR. COVITZ: Yes.

27 SENATOR KOPP: -- to carry it out.
28

1 MR. COVITZ: And Senator, that is -- that process
2 is well underway.

3 SENATOR KOPP: Let me ask you about the Department
4 itself and the organization of the Department.

5 We all know that it's got about 20,000 employees.
6 You have a budget of over \$5 billion. We put ourselves on
7 the line voting for gas tax increases, fuel -- I mean weight
8 fee increases, and the \$64 Question is delivery of
9 transportation projects.

10 It's been pointed out repeatedly that Caltrans has
11 an overhead of about 40% plus. That's without counting the
12 overhead that emanates from all the environmental regulations
13 and the like, which probably would take it over 60%.

14 One of the provisions in SB 300 set a target of
15 reducing that overhead to 20% in the next three fiscal years.
16 We're already into the second fiscal year.

17 It's a bureaucracy which was designed for the '50s,
18 in my opinion, and we're in the '90s.

19 Do you have a plan with respect to reorganizing
20 that Department, reducing the overhead?

21 MR. COVITZ: Senator, we're not prepared to focus
22 on reorganization right now. There are preliminary steps
23 that must be taken.

24 I believe that one of the first steps, and
25 something that we're pleased, is the availability of Jim van
26 Loben Sels, who has extensive experience in major public
27 works organizations, as you know, as Commanding General of
28

1 the Corps of Engineers. There is some degree of similarity
2 in large bureaucratic organizations, as with Caltrans. And
3 for General van Loben Sels --

4 SENATOR KOPP: But he's not coming to work until
5 October 1st.

6 MR. COVITZ: Right. And I believe that a
7 reorganization directed by -- I'm sorry, an evaluation
8 directed by General van Loben Sels will be the first order of
9 business.

10 Number two is that the Governor has committed to a
11 management evaluation very much similar to the Grace
12 Commission that was done on the federal level. And Caltrans
13 is the priority of that evaluation.

14 SENATOR KOPP: What can we expect by way of a time
15 within which the evaluation is conducted and completed?

16 MR. COVITZ: I'd like to believe that with the
17 advent of Jim van Loben Sels, it will begin promptly.

18 SENATOR KOPP: And finished when?

19 MR. COVITZ: I'd be reluctant to give you a date
20 right now, but as soon as we've had an opportunity to
21 evaluate it, we'll come back.

22 I would agree that it's quite appropriate for an
23 evaluation of the organization and structure of Caltrans.

24 SENATOR KOPP: As you know, I carried a bill at the
25 request of the administration, SB 184, which had the happy
26 purpose of raising everybody's driver's license and vehicle
27 registration fee because the motor vehicle fund had been
28

1 raided for about \$40 million because of the budget gap, and
2 it was represented that more money was needed for CHP
3 operations.

4 First of all let me say to you that -- the Members
5 might be interested in this -- I've never had the experience
6 that I had with that bill in the Assembly, where one evening
7 about 7:30, I was sitting in my office, and I get a call from
8 the Sergeant of the Assembly Transportation Committee that SB
9 184 is up. That's how I found out about it.

10 Let me correct that. It was the Assembly Ways and
11 Means Committee. The bill had been taken up off the Assembly
12 Floor by the Transportation Committee the day before, or
13 something, with no notice to me, the author. And then I just
14 happened to be in the office with the Sergeant-at-arms
15 called.

16 I'm just curious as to who was in charge of that
17 particular matter?

18 MR. COVITZ: I couldn't say, Senator. I'll be glad
19 to look into it and get back to you. I do not know at that
20 time who was coordinating the process of the bill.

21 SENATOR KOPP: To continue, as I think you know,
22 I've had to write -- I had to call a couple times, then I had
23 to write a couple letters specifically because I wanted to be
24 assured, and I wanted a commitment, that that money which
25 we're taking additionally from taxpayers would go in to
26 increasing CHP enforcement of rules governing the operation
27 of trucks on our highways.
28

1 I'm curious as to -- I'm interested as to why it
2 took so long for that logical assurance and commitment to be
3 given?

4 MR. COVITZ: I believe it was communicated to you
5 as well as the assurances.

6 SENATOR KOPP: After a couple months. It took a
7 couple months for it to be communicated.

8 MR. COVITZ: I believe that it was always intended,
9 and perhaps the deficiency was in the communication too you.
10 We concurred with you that that was an appropriate
11 utilization of the funding.

12 SENATOR KOPP: Let me ask this question in that
13 very regard. I'll tell you, an awful lot of people who used
14 to think I was a fiscal conservative aren't very happy with
15 me because of that bill and one or two others.

16 As you know, the Highway Patrol has provided me
17 with about three or four pages of incidents in which the CHP
18 had to provide transportation service to you, members of your
19 family, and the like. You've seen that letter, and you've
20 seen the recitation of all of those.

21 My question is, do you think it's appropriate, now
22 that we've raised these fees to replenish and increase the
23 CHP coffers, for those purposes?

24 MR. COVITZ: Yes, Senator, I have seen the letter,
25 and I'd like to share with you that the procedures have
26 changed over time as I have become more familiar with the CHP
27 and its process.
28

1 For instance, the CHP does provide a protective and
2 transportation detail of plainclothes on a regular basis to
3 the Governor and Lieutenant Governor, and on a more
4 infrequent basis to other executive branch officials, Members
5 of the Legislature, and agency and department.

6 Recently I made the determination that I would not
7 utilize that service. I felt that my needs, which are
8 basically to provide transportation to and from the airport,
9 can be most efficiently provided by an officer where that
10 patrol unit is on duty within what amounts to five or ten
11 minutes of that location. And so, I have elected not to use
12 it except for very special occasions. And I think it has
13 become less and less frequent in my use of it.

14 So, I am comfortable that -- and incidentally, only
15 on official business. So, I do believe that we are -- I use
16 it at -- with discretion and at appropriate times.

17 SENATOR KOPP: Well, was it official business to
18 pick your wife and you up at LAX arriving from Yuma?

19 MR. COVITZ: Yes, it was. I was with the Governor
20 on our visit to the Board of Governors Conference. It
21 happened to be Yuma because that was the location where the
22 Governor and I stopped for customs.

23 SENATOR KOPP: Who is John Pimentel?

24 MR. COVITZ: John Pimentel is a special assistant
25 that works in the office.

26 SENATOR KOPP: How about the use of the Caltrans
27 helicopter to watch the parade for veterans returning from
28

1 Desert Storm? Is that an appropriate or proper use of gas
2 tax money?

3 MR. COVITZ: Yes, Senator, I believe so. That's
4 not quite the appropriate representation.

5 What had happened was that I did hear that the --
6 there was a -- referred to in Southern California as a Sig
7 Alert, an area of freeway congestion, because of a parade.
8 And knowing that both the Highway Patrol and Caltrans were
9 involved in that situation, I went over to see it. I asked
10 to be brought to the scene by the Highway Patrol because I
11 was interested in seeing the effect of it.

12 I might add that when I arrived at the scene, I was
13 offered the opportunity of sitting in the VIP section area to
14 watch the parade. We arrived late; the parade was almost
15 over. I said that I was not there basically to see the
16 parade. If I were, I would have sat in the VIP section. I
17 was there to see Caltrans and Highway Patrol in operation.

18 When I was there, a Highway Patrolman mentioned
19 that Caltrans had a helicopter in the air whose purpose was
20 to coordinate the activities of Highway Patrol and Caltrans,
21 particularly as it related to the congestion of the freeway
22 activity, and offered me the opportunity to go up and observe
23 from the air.

24 I can tell you, Senator, that you can't see much of
25 a parade from the air. So, that which I observed was
26 Caltrans in operation, the impact of that kind of an activity
27 on the freeway system, as well as the activity of the Highway
28

1 Patrol both of which were -- are my responsibilities and I
2 felt quite comfortable in observing.

3 SENATOR KOPP: Well, the report on it indicated
4 that there were other people with you.

5 MR. COVITZ: Yes.

6 SENATOR KOPP: Three guests.

7 MR. COVITZ: Yes, my wife, and child, and perhaps a
8 friend of his. It turned out that they were in the car with
9 me, and they did accompany me on the helicopter.

10 SENATOR KOPP: The CHP Commissioner states that
11 there's assigned to you a 1991 Ford Crown Victoria, license
12 number 2UHT887.

13 About seven or eight years ago, I'm informed there
14 was legislation to authorize agency secretaries to use state
15 vehicles without a Diamond E license, and that bill was
16 defeated in the Senate.

17 Don't you think that you're subject the existing
18 law which relates to the use of vehicles, namely use the
19 Diamond E license plate vehicles?

20 MR. COVITZ: Yes, well, my understanding, Senator,
21 is that that car is the backup car for the Governor's
22 protective detail. And consequently, as a policy vehicle,
23 and as you know, it is equipped with a Highway Patrol radio,
24 lights and sirens.

25 SENATOR KOPP: Those are described, think, deftly
26 in this fashion: "These vehicles are also equipped for the
27 purpose of responding to an emergency if such vehicle is
28

1 operated by a sworn member of the CHP."

2 That means they have the red lights and sirens.

3 MR. COVITZ: Right. That's not for my use; that's
4 for the CHP's use.

5 SENATOR KOPP: I just have a couple of other
6 questions that pertain to the Agency itself and I think are
7 fundamental because, as I started out, business and housing
8 are two subjects important. Transportation, in my view, is
9 equally if not more important.

10 I have suggested, and you're privy to that letter
11 to the Governor, that the Agency be reorganized, and that
12 transportation be established as a separate agency.

13 We've asked the voters to put themselves in debt.
14 We've increased their taxes, just about everything relating
15 to a vehicle, gas, driver's license, the vehicle
16 registration, the in lieu of a personal property tax, a
17 charge on vehicles.

18 Don't you really think that transportation should
19 be a separate agency?

20 MR. COVITZ: Senator, I think that the structure of
21 the executive branch is the prerogative of the Governor to
22 decide. And I think that he has decided that he's
23 comfortable with the structure as it exists today.

24 That's not to say that there shouldn't be an
25 evaluation and reconsideration in the future. And I think to
26 the extent that Grace Commission activity, which will
27 evaluate all major sectors of the executive branch, might
28

1 well make recommendations and persuade the Governor
2 otherwise.

3 SENATOR KOPP: Well, it could be done
4 legislatively, too. What would your recommendation be if a
5 bill was introduced?

6 MR. COVITZ: I'd have to evaluate the bill. I
7 think that the transportation priorities, transportation
8 implementation of programs, can be accomplished under the
9 existing structure with dedicated people.

10 SENATOR KOPP: Finally, let me observe for your
11 benefit and the benefit of the Members of the Committee and
12 the public that this year, Caltrans, CHP, and the Department
13 of Motor Vehicles had no approved positions on the most
14 important bills presented to the Senate Committee on
15 Transportation.

16 Is there some reason or reasons for the failure to
17 have approved positions?

18 MR. COVITZ: No, not at all.

19 I think that we do take positions on all types of
20 legislation. It is in conjunction with the Governor's
21 Legislative Office, and we will continue to evaluate each one
22 individually and make a determination.

23 CHAIRMAN ROBERTI: Let me stop you right there,
24 Senator.

25 I have a number of questions. I think some of the
26 other Members of the Committee do, and I think there are
27 people who wish to testify.
28

1 I would like to complete the hearing, but I don't
2 know if we have time to do it today. I would like to
3 complete it, hopefully, this week.

4 My suggestion is that we break at 5:00, which is
5 now, and come back some other time, another time this week,
6 just to hear the Covitz appointment.

7 MS. MICHEL: Do you want to set a time specific? I
8 don't know whether there's anyone here to testify. You can
9 find that out.

10 CHAIRMAN ROBERTI: How many are here to testify on
11 the appointment? That's good. It makes me feel better.

12 My problem is that I have an appointment at 5:00
13 o'clock.

14 Why don't we carry this over until tomorrow? We'll
15 try to expedite this.

16 MS. MICHEL: Time to be announced?

17 CHAIRMAN ROBERTI: We're in session. I think
18 everybody -- 1:00 o'clock tomorrow.

19 We have to waive which rule? Senator Craven moves
20 that we waive Joint Rules 62(a), recommended waiver, so that
21 we can meet tomorrow at 1:00 o'clock for Covitz and anything
22 we have in Executive Session. Covitz will be taken up first,
23 just continue the Committee.

24 MS. MICHEL: Senator Roberti, you have another
25 Governor's Appointee required to appear. Do you want to hold
26 that over until tomorrow?

27 CHAIRMAN ROBERTI: Ms. Belshe.
28

1 MS. MICHEL: Tomorrow or next week?

2 CHAIRMAN ROBERTI: Better next week. I don't want
3 her waiting. We'll take her up for sure next week.

4 Senator Craven moves. Any discussion or debate?
5 Any opposition? Hearing none, such will be the order. The
6 recommendation will be on the Floor. We will reconvene at
7 1:00 o'clock tomorrow.

8 I'm sorry, but we will get through this.

9 [Thereupon this portion of the
10 Senate Rules Committee hearing
11 was terminated at approximately
12 4:57 P.M.]

13 --oo0oo--
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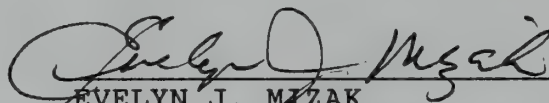
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2:15 P.M.

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2 STATE OF CALIFORNIA
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6 PARTIAL HEARING: CARL D. COVITZ
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21 2:15 P.M.
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24

25 Reported by:
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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SENATOR ED DAVIS

SENATOR QUENTIN KOPP

CARL D. COVITZ, Secretary
Business, Transportation and Housing

SENATOR CHARLES CALDERON

SENATOR BILL LOCKYER

SENATOR ART TORRES

AARON READ
California Association of Highway Patrolmen

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P-R-O-C-E-E-D-I-N-G-S [SEPTEMBER 4, 1991]

--oo0oo--

CHAIRMAN ROBERTI: The Committee will come to order.
The next item on the agenda is the nomination of Carl D. Covitz,
Secretary of the Business, Transportation and Housing Agency,
being escorted here by our colleague Senator Davis.

Senator, we'll let you start.

SENATOR DAVIS: Thank you very much.

It's an honor and a privilege to come here and
recommend the confirmation of Carl Covitz. Governors don't
always appoint people with appreciable abilities. Sometimes
they find political cripples around that they give fine
appointments to.

And I'm glad, because Carl, since he came to our L.A.
community in the early '70s, has demonstrated his dynamic
ability to get things done. He came here from New York where he
had a Senior Vice President's position with ITT, and he served
in the end of the Reagan administration in HUD. The mistake
they made was not making him Director; they would have avoided a
lot of problems probably at that point.

In Los Angeles, because of his demonstrated ability
to develop a national development firm, my police classmate, Tom
Bradley, when he had real problems in his housing component of
city government, called on Carl to come in and clean the mess
up, which he did. To show that Carl doesn't lean necessarily to
helping Democrats, it just happened that Tom happened to be
Mayor of L.A. He would have done it for a Republican, I'm sure.

1 When a Republican Governor, Pete Wilson, wanted
2 someone to really breathe some life into the business industry,
3 housing industry, and transportation, he made a very logical
4 choice in bringing Carl in for this position.

5 I asked Carl when he first accepted it how he was
6 able to do that, and he said he has a very long-suffering and
7 understanding business partner who allowed him the leisure of
8 coming in and helping the state government.

9 So, I think we're very fortunate to have Carl Covitz
10 as our Secretary of Business, Transportation and Housing. And
11 his commitment to housing is, I don't think, can be second-
12 guessed by anyone.

13 I have a letter here. I'm not going to try to read
14 it into the record, but hand it to the Sergeant and ask that it
15 be placed in the record of this hearing. One is from Eli Broad
16 of Broad and Coffman and Board Insurance, and the other one is
17 from Tom Bradley. Both letters extolling the virtues of Carl
18 for this wonderful job.

19 CHAIRMAN ROBERTI: Very good. Mr. Broad called me
20 yesterday.

21 Mr. Covitz, we'll ask you to make a comment as to why
22 you feel you're qualified to assume this position.

23 MR. COVITZ: Mr. Chairman and Members of the
24 Committee, first to Senator Davis, thank you for those kinds
25 words.

26 I'd like to thank the Committee for giving me the
27 opportunity this afternoon to outline some of my thoughts and
28

1 ideas as to what I see ahead for the State of California in the
2 area of business, transportation and housing.

3 December of last year was almost two years since I
4 had returned to Los Angeles from federal public service. I was
5 again running my own business, and at the same time had accepted
6 the positions of Chairman of the City of Los Angeles Housing
7 Authority and Chairman of the Board of the Federal Home Loan
8 Bank of San Francisco, and my plate was full at that time. So,
9 when Pete Wilson asked me if I would consider serving in
10 Sacramento as Secretary of Business, Transportation and Housing,
11 I was flattered, but I didn't see how I could take on yet
12 another public service job.

13 The Governor was persistent and persuasive, and the
14 main reason I finally accepted this appointment is because,
15 apart from my firm belief in the vision, capabilities and
16 determination of Pete Wilson, I do believe there is a great deal
17 this state can do to regain its competitive advantage and return
18 to a healthy economy, to produce a first-class transportation
19 system for the 21st Century, and to provide affordable housing
20 and community development for the citizens of California.

21 I know there are people who have wondered why I've
22 become involved in federal, local and state public service over
23 the last 11 years, and the answer is simple. I have been a
24 product of the California dream. I arrived here 18 years ago
25 with no job and my wife was pregnant. Since then, I have found
26 my business success in a great country and in an exceptional
27 state.
28

1 I believe there's a time in a man's life when, if he
2 can, he puts something back into the system, and this is my
3 time. I came in 1973, seeking opportunity in the real estate
4 market in what I thought was a unique area. I came to the state
5 to begin a business, to raise a family. My wife and I knew
6 virtually no one in California. But what I did know was that if
7 I ever was going to be my own boss and have my own company, that
8 this was the time and California was the place.

9
10 However, as a small businessman starting in the
11 building industry, I arrived inn California just in time to
12 experience some pretty rough cycles of economic recession. But
13 I was fortunate at the time, and I had lenders who stood by me
14 during this shaky period, and the economy improved.

15 Today I am in a position where I can keep the same
16 economy on track for other small business people coming to
17 California with a dream and a goal, for corporate organizations
18 that belief in California and want to do business here.

19 I bring to this job managerial and corporate business
20 skills in housing, banking and commerce that I would like to
21 apply to the Wilson agenda. The challenge before us all today
22 is to keep the California economy vibrant and competitive. We
23 need to be responsive to the economics of people in growth,
24 housing and transportation demands. In order to keep
25 California's business climate competitive and increase our job
26 growth rate, we have intensified our business retention and
27 attraction efforts. Keeping jobs in California will be -- will
28 continue to be one of our highest priorities.

1 Providing affordable housing is one of the keys to
2 maintaining and improving California's economic well being.
3 High housing prices contribute greatly to the cost of doing
4 business in this state. They contribute to traffic congestion
5 and air pollution because of the necessary longer commute times
6 for the less expensive area homes.

7 Transportation is, of course, an issue of immense
8 importance to the future of California. Due to a growth rate of
9 almost 2200 people a day, California adds over a million cars to
10 its roadways every year. We simply cannot expand enough to
11 absorb those new numbers. In a race between new freeways and
12 new automobiles, the new automobiles always win.

13 Meeting California's transportation challenge calls
14 for a balanced approach that takes people out of single occupant
15 vehicles and puts them into rail cars, car pools, telecommuting
16 centers, and bus networks.

17 We're laying the groundwork for the future challenges
18 that await California, and I'd be proud to be a part of it.

19 Mr. Chairman, thank you. I'd be glad to take your
20 questions.

21 CHAIRMAN ROBERTI: Thank you very much, Mr. Covitz.

22 Let me ask you a few questions I have before me that
23 I think we really must ask, and that is regarding problems with
24 HUD when you were Under Secretary.

25 I take it you were in charge of the day-to-day
26 operations of HUD?

27 MR. COVITZ: For the most part.
28

1 CHAIRMAN ROBERTI: For the most part?

2 MR. COVITZ: My responsibilities as Under Secretary
3 were dependent upon those assignment received by the Secretary,
4 but for the most part they were the day-to-day operations of the
5 Department.

6 CHAIRMAN ROBERTI: I understand most of the problems
7 that HUD had revolved around the allocations that were made by
8 the Department.

9 To what extent did you have any decision-making in
10 that?

11 MR. COVITZ: Yes, sir.

12 The focus of the attention of the last few years on
13 HUD had been primarily one program, Mod Rehabs Section-8. A bit
14 of background might be appropriate.

15 It was a fully discretionary program, meaning that
16 the Secretary had the absolute determination of awards of those
17 grants. And there was during my tenure, perhaps, two or three
18 meetings that I participated in which those grants were
19 discussed.

20 There was at the time, the recommendation would
21 surface from the Department of Housing -- you must understand
22 that in the federal government, the terminology's a little bit
23 different. The large organization is called the Department and
24 the smaller organization is called the Agency; it's the reverse
25 as it is here. That was the FHA organization, and it was headed
26 by an Assistant Secretary of Housing. The Assistant Secretary
27 of Housing would bring to the meeting, of which I was a member,
28

1 a recommendation for allocation to public housing authorities.
2 We would review it, pass it on to the Secretary, and it was his
3 final determination. I did participate in those meetings.

4 I must say, however, that I was uncomfortable with
5 the process, and I had initiated a program for change in that
6 process. The change was begun at the end of the administration,
7 and my understanding is that Secretary Kemp, in the subsequent
8 administration, decided that the program was inappropriate and
9 had canceled it.

10 CHAIRMAN ROBERTI: I've been given some information,
11 I don't know how correct it is, that Mr. Pierce on occasion
12 blamed you for some of the alleged inappropriate activity in the
13 granting of allocations. Am I correct or --

14 MR. COVITZ: Mr. Chairman, I don't think so. I have
15 never been accused of any wrongdoing in that process. I have
16 never been implicated in any way in that process. Even in the
17 judicial proceedings that are under way as well as the
18 Congressional committee hearings --

19 CHAIRMAN ROBERTI: You've not been named, and I think
20 the record should reflect that.

21 MR. COVITZ: Right, I was never a part of that in any
22 way.

23 CHAIRMAN ROBERTI: Your making recommendations of a
24 change in the process, do you have any documentation to that
25 effect, or something along those lines?

26 MR. COVITZ: I believe the record shows -- and I did
27 not bring with me any files from my days at HUD -- but I believe
28

1 that the record shows of the Lantos subcommittee hearings in
2 Washington that there was change recommended, and that I had
3 been the motivating force behind that change.

4 Now, you should know that I don't believe the change
5 was ultimately implemented. I was at the Department
6 approximately a year and a half, and during that time I
7 participated in perhaps two or three of those meetings. And
8 consequently, it was after the first or second meeting that I
9 felt there -- it would be appropriate to make a change and had
10 brought the groups together that would deal with it. I don't
11 believe that the change had been fully implemented by the time I
12 left.

13 CHAIRMAN ROBERTI: What did you call it, the Rehab.
14 program?

15 MR. COVITZ: Yes, Mod Rehab, it was referred to,
16 Section-8 Mod Rehab.

17 CHAIRMAN ROBERTI: It had its own agency or --

18 MR. COVITZ: Department, the Federal Housing Agency,
19 FHA, would make the recommendation to the Secretary.

20 CHAIRMAN ROBERTI: And they would make the
21 recommendation directly to the Secretary.

22 MR. COVITZ: They would make the recommendation to a
23 committee, of which I was one of three, and the committee would
24 make the recommendation to the Secretary.

25 I must say that the committee understood that it was
26 the Secretary's discretion and believed that he would
27 ultimately decide. We were never informed as a committee what
28

1 the decision was and how the awards were made. I was never
2 aware of the ultimate determination of the awards.

3 CHAIRMAN ROBERTI: And you have never been
4 interviewed by any investigatory body regarding this committee?

5 MR. COVITZ: Yes, I've been interviewed, but staff of
6 Congressman Lantos did talk to me, but I was never called to
7 testify. They just asked me what had happened, what the process
8 was.

9 CHAIRMAN ROBERTI: In regard to another matter, I've
10 been told that in your past management record at HUD -- let me
11 rephrase that. What exactly do we mean when we say day-to-day
12 operations of the Department?

13 MR. COVITZ: Probably best described as, I would be
14 involved with any particular policy or day-to-day operation that
15 transcended one department or another. For instance, if there
16 was an issue that had both the involvement of FHA and GINNIE
17 MAE, but HUD organization, then I would moderate, intervene, or
18 supervise in some fashion. And as well, I was given specific
19 assignments over time to be responsible for particular areas.

20 CHAIRMAN ROBERTI: Very good. I might have some
21 questions later, but the other Members may want to ask something
22 at this juncture.

23 Senator Kopp has been asked to join the Committee as
24 a courtesy we extend.

25 SENATOR KOPP: Thank you, Mr. Chairman.

26 Let me lay a predicate, Mr. Covitz, for my
27 questions, which deal with about five or six transportation
28

1 policy areas, and only transportation, because, as you know,
2 that's my particular sphere of interest. And business and
3 housing may be one thing, but transportation, in my strong view,
4 as you know, is another thing.

5 And what I see is a period of about eight months,
6 almost exactly eight months since your nomination to be
7 Secretary of this Agency, and when I see clearly is a lack of
8 attention to transportation issues that reminds me of the Jerry
9 Brown days. And I say that regretfully, because, having known
10 him since he was in high school, I was one of his spirited
11 supporters, and then was just dismayed as a member of a county
12 board of supervisors to observe what happened to Caltrans under
13 his Caltrans Director.

14 And as a result of the lack of attention, what I also
15 see is that the California Transportation Commission has simply
16 become the de facto decision maker for transportation, which is
17 almost exactly what occurred under Jerry Brown.

18 I share your views about the capabilities and vision
19 of Governor Pete Wilson, but at a time which follows
20 immediately after the voters of California gave their
21 imprimatur to spending as much as \$18 1/2 billion over the next
22 nine years, there's no follow through. And there's been eight
23 months to do it.

24 Let me start with Section 163 of the Streets and
25 Highways Code, which requires that a six-year transportation
26 funding plan be submitted to the Legislature at the same time as
27 the proposed budget is submitted. I haven't seen that plan. My
28

1 question is: where is that plan? Why wasn't it submitted this
2 year?

3 MR. COVITZ: Senator Kopp, perhaps I should first
4 address your earlier comment.

5 I'd like to share with you that transportation is
6 perhaps a priority, if not the priority, of the Agency. We took
7 the time, and appropriately so, I think, to search the country
8 for the very best person we could find as Director of Caltrans,
9 and interviewed more than a hundred candidates, having selected
10 finally General Jim van Loben Sels. That did take time, and
11 perhaps there might be criticism today of the delay in
12 undertaking that search, but I think the State of California and
13 Caltrans will be well-served by having done that and being able
14 to persuade General van Loben Sels to join us.

15 There are other areas where we have worked
16 strenuously to maintain the priority of transportation policy.
17 As an example, you may recall in the original budget of Governor
18 Wilson, there was a limit on 108 and 116 funding to the amount
19 of \$585 million. During that time and in the last budget
20 negotiation, I prevailed upon the Governor, after a good deal of
21 discussion that the full amount of required spending in 108 and
22 116 was absolutely essential. And in the budget negotiation
23 that recently was completed, there have been set aside funds for
24 the full implementation of the 108 and 116 funding.

25 In terms of the required -- and I believe you're
26 referring to the 1992 STIP process -- we are planning at
27 Caltrans to continue that STIP process. There is currently \$1.6
28

1 billion available for spending, and I think that it's important
2 that we proceed with that.

3 SENATOR KOPP: Well, the STIP is separate. The STIP
4 is a seven-year expenditure plan.

5 MR. COVITZ: Yes.

6 SENATOR KOPP: Section 163 of the Streets and
7 Highways Code emanates from 1987 legislation, as I recall. That
8 requires a six-year funding plan to be submitted concomitantly
9 with the budget. It wasn't done.

10 As Secretary of the Agency, which includes
11 transportation, I ask you to explain why it wasn't, and what the
12 status of it is. When will it be submitted?

13 MR. COVITZ: Yes.

14 I don't have a precise answer, Senator, and I'd be
15 more than happy to get back to you as soon as possible on that.

16 SENATOR KOPP: You know that I've corresponded, and I
17 must advise you that it has taken time, more time than it
18 should, for answers to be given to letters about the seismic
19 safety retrofit requirements. The Department of Transportation,
20 under legislation enacted in 1990, at the end of '89, after the
21 earthquake, was required to investigate all the bridges on state
22 highways and evaluate which ones need seismic safety retrofit,
23 need to be strengthened in case of earthquakes. And that report
24 was finished on time, January 1st. It wasn't released for two
25 months, which surprised me. I still don't know the reason it
26 wasn't released immediately, but it was released about March
27 1st.
28

1 It found that there were some 700 or more bridges on
2 state highways which needed strengthening. Estimated cost,
3 almost a billion dollars. The billion dollars is not provided
4 for in the transportation package adopted by the Legislature and
5 the Governor in 1989 [sic]. There's no money in the funds that
6 will be generated from the increased gas taxes.

7 We call it popularly the Proposition 111 money,
8 although Prop. 111 amended the Constitution. That's my
9 reference to the imprimatur of the voters on spending the
10 additional tax money.

11 There still is no plan to pay for that strengthening
12 which is occurring right now. Money has to come out of the
13 state highway account. A couple of bills pending that I think
14 are short-sighted, deficient, because they contain no way of
15 providing money for what's called short-term borrowing, which
16 means paper for 18 months to five years, and it's a shell game
17 in my opinion. It's a shell game which the people of California
18 won't understand, but the bill is going to come in. And I'd
19 like to to know, without all the glittering generalities, what
20 is the plan to pay for that almost billion dollars of needed
21 repairs on bridges on state highways, let alone the second part
22 of the question, the additional \$3 1/2 billion for several
23 thousand additional bridges that the Department should be --
24 says should be strengthened over the next 10 years?

25 MR. COVITZ: Yes.

26 Senator, that's a good question, and I'd like to
27 answer it in a number of ways.
28

1 I understand by legislative mandate that seismic
2 retrofit is a priority. And consequently, that will be the
3 first funding from the highway bill.

4 I have had a number of conversations with the
5 Governor and his staff regarding alternative direction and
6 perhaps source of funding. And I know you met with the Governor
7 last Thursday. I'm sorry I couldn't join you. I was taking my
8 son to college on that day.

9 SENATOR KOPP: I hope it was the right college.

10 MR. COVITZ: Of course it was.

11 SENATOR KOPP: Either Dartmouth or Villanova.

12 MR. COVITZ: Right city; right, Senator Craven?

13 SENATOR CRAVEN: He's going to Penn?

14 MR. COVITZ: Right.

15 But there is no doubt that seismic retrofit is the
16 priority. It is a legislative priority, and it will continue to
17 be. So as of today, the money will come from the highway fund
18 to do that.

19 The delay on seismic retrofit has occurred as a
20 result of the fact that we are forging new ground in seismic
21 retrofit. There was never an on-the-shelf program available to
22 deal with the problems of earthquake and strengthening those
23 highways and bridges that we have available. And as a part of
24 that process, there was created a peer review group, and its
25 purpose was to evaluate all the ideas and suggestions and come
26 up with the very best solution to deal with seismic retrofit.

27 There was some level of controversy, but I believe
28

1 the group has finally come together in a consensus as the best
2 means to deal with the issue. So, in terms of where do we move
3 from there, there is no doubt, seismic retrofit is a priority.
4 It is now -- it will now be funded from the highway fund, and we
5 are considering alternative sources and evaluating alternative
6 sources of funding as well, including your own legislative
7 recommendations.

8 SENATOR KOPP: My legislative recommendation is a
9 bill, 868, to increase the gas tax 2 pennies for 30 months to
10 produce that money.

11 And the delay reasons are well known, especially to
12 us in the Bay Area. And I've defended the Department time and
13 again, although it becomes increasingly difficult when you have
14 people clamoring for the re-opening of 280, which is in the
15 heart of the district I represent.

16 But I'm talking about cold, hard cash. And it's
17 evaluation, evaluation, evaluation. There's no trick to this.
18 There has to be money. And borrowing money for 18 months or 3
19 years means you've got to pay it back. When you pay it back,
20 you've got to pay it with interest. And the interest is going
21 to come right out of the hide of highway projects that are
22 already part of the state transportation improvement program.

23 In political fairs, it's too easy to put something
24 off until someone else's watch occurs. And I'm not going
25 anyplace. I hope I'm going to be here for a while. I'm going
26 to keep crying the alarm.

27 What I'd like to get is some specific plan as to
28

1 where the money's going to come from. If the two penny gas tax
2 isn't acceptable policy or the best policy in your judgment,
3 what is?

4 MR. COVITZ: Well, you and I have had this
5 conversation, and I know that it is a priority not only of the
6 Agency but also of the Governor. And it is -- it will be
7 administration policy, and I would say in short order we will be
8 able to come to you with a suggestion as to how to deal with it.

9 Right now, it is continuing. Seismic retrofit is a
10 priority, and it is being paid for out of the highway fund. It
11 is not being delayed.

12 SENATOR KOPP: Let me ask you about the STIP, then.
13 You mentioned the pending Federal Transportation Act. The
14 Senate has passed a version and the House has passed a version.

15 MR. COVITZ: No, the House is delayed.

16 SENATOR KOPP: The House is still in the mock-up
17 stage, or whatever.

18 We can't predict what the eventuality will be. We,
19 meaning the decision makers of the State of California, have a
20 bond issue on the ballot for rail bonds, another billion
21 dollars, November of next year, just about 15 months from now.

22 The Commission, CTC, is planning to adopt a STIP
23 early next year, as you know. That STIP, as far as I can see,
24 is based upon hypothetical assumptions. And as I said, the STIP
25 is for seven years; we know that. So, that will commit a
26 spending plan for seven years, which incidentally goes over into
27 the next term of the Governor.
28

1 Some people have suggested -- I'm not ready to
2 suggest this quite yet -- that the adoption of that STIP be
3 deferred until you don't have to rely on hypothetical
4 assumptions.

5 Is the CTC simply going to go ahead and make that
6 decision for the administration, for the Legislature, the State
7 of California?

8 MR. COVITZ: May I answer it?

9 SENATOR KOPP: The question implies, are you going to
10 let them do that?

11 MR. COVITZ: Senator, I can't speak for the CTC. I
12 can speak for the administration.

13 And perhaps I might preface this by saying that the
14 reauthorization of the Federal Highway Bill is, perhaps, the
15 most significant federal legislation affecting the State of
16 California for the next 10 years. I recognize it's only a
17 five-year bill, but its impact is enormous.

18 And I personally have been to Washington on two
19 occasions, one of which you read about in the newspaper with a
20 car and driver that I paid for myself. But I was there lobbying
21 because it is so critical to the state. I met with all of the
22 California delegation that is involved in it on the committee or
23 the subcommittee. I brought together the private sector in
24 Washington who had any effect -- who would have any effect on
25 the reauthorization of the Highway Bill.

26 And I believe that we are moving forward in a program
27 that will be very much in the best interests of the State of
28

1 California. I'm very optimistic.

2 In addition to my being there, we have assigned
3 full-time legislative staff from Caltrans, and we have also
4 hired a lobbying firm.

5 Now, having said that, and in anticipation of a
6 benefit for the State of California in the event that the
7 Highway Bill is passed and signed by the President, I believe
8 that we have to move forward at this point with the STIP
9 process, because the unknown creates a serious problem. If
10 nothing comes of the Highway Bill, there is a possibility that
11 the Federal Highway Bill will not pass, will not get out of the
12 House, and there'll be nothing more than a continuing
13 authorization. On that basis, we have to be prepared to move
14 ahead with the billion-six that we have available in
15 transportation funds, and the only way to do that is in the STIP
16 process.

17 So, at this point we feel that the appropriate
18 approach is to continue with the STIP process. We -- as you
19 know, it's not -- I believe it's not approved until late in the
20 year, and we very well may know in September, the end of
21 September, when Congress reconvenes, or perhaps October,
22 precisely what will happen with the federal legislation.

23 I hope that addresses your question.

24 SENATOR KOPP: Well, would you recommend -- this was
25 done before -- would you recommend that legislation be in place
26 that would authorize CTC to defer adoption of the STIP, because
27 at least if our schedule is adhered to, we're going to be
28

1 adjourned a week from Friday. I wouldn't be sure, and you're
2 not sure, of enactment of the Federal Transportation Act by that
3 time or even by the end of September. It may be October.

4 MR. COVITZ: Yes.

5 SENATOR KOPP: November.

6 MR. COVITZ: Yes, we face that. We do face that
7 uncertainty.

8 SENATOR KOPP: Would you recommend such legislation?

9 MR. COVITZ: My recommendation would be to proceed
10 with the STIP and attempt to evaluate with some degree of
11 flexibility the federal legislation as it proceeds when Congress
12 reconvenes.

13 SENATOR KOPP: And not enact legislation that would
14 authorize CTC to defer adoption of the STIP?

15 MR. COVITZ: Not at this time, because at risk is a
16 billion-six of available funding for transportation projects if
17 we defer.

18 SENATOR KOPP: You've mentioned the fact that you
19 spend time lobbying in Washington on the Federal Transportation
20 Act.

21 It's also true that that at the same time you and
22 Carl Williams of the Department were there, that there were
23 three members of the CTC and a staff member there, lobbying for
24 a different version of the Transportation Act; right?

25 MR. COVITZ: Well, I can't speak for the CTC.

26 SENATOR KOPP: Well, but as a matter of fact, isn't
27 that what occurred?
28

1 MR. COVITZ: I'm not sure. I think that -- we have
2 met with the CTC, with the staff and the members. And my
3 understanding is we are now very much in agreement as to the
4 California position, the united California position, for the
5 reauthorization act.

6 SENATOR KOPP: Well, you weren't in agreement then,
7 because they had a different position, a position which I think
8 can be accurately or fairly characterized as leaning more
9 towards highway building.

10 The question presented is, who speaks for California?
11 When you're back there, you're lobbying with a couple of people
12 this way; they're lobbying that way. The taxpayers, of course,
13 are paying for both sets, and the person who's the object of the
14 lobbying is looking at two different positions.

15 MR. COVITZ: Yes.

16 Again, Senator Kopp, I can't -- it's difficult for me
17 to speak for the CTC. I believe today that we are in agreement
18 on all significant issues affecting California in the
19 reauthorization bill.

20 SENATOR KOPP: Has that been memorialized in writing?

21 MR. COVITZ: Well, I have met with the CTC. I've met
22 with the Chairman, and there was a meeting just last week which
23 I attended dealing with the status of it. And I do believe
24 we're in agreement.

25 We are looking for --

26 SENATOR KOPP: Is there a written memorialization of
27 that agreement?
28

1 MR. COVITZ: No, I have not seen it.

2 SENATOR KOPP: Neither have I, and I'd like to know
3 what it is that represents California's position, supposedly.

4 MR. COVITZ: We'd be more than happy to provide a
5 briefing for you, Senator.

6 SENATOR KOPP: Okay. I think it ought to be made
7 available in writing so that other people, besides 120
8 Legislators and other insiders, can have an opportunity to
9 evaluate it.

10 MR. COVITZ: Well, I might add, there has been
11 extensive documentation of the California position, extensive.
12 It was the means by which I -- it was the source of my
13 information for dealing in the lobbying effort. And it is my
14 understanding, because I have discussed it with the California
15 Transportation Commission, with the staff and with the members,
16 it is my understanding that they concur with that.

17 SENATOR KOPP: Well, I'd like to see, as I say, a
18 written memorialization of whatever that agreement is. I
19 certainly want to compare it to the resolution, the policy, that
20 was adopted by this body, the State Senate.

21 My questions obviously contain in them, speaking for
22 themselves, what I consider a rather bizarre spectacle that did
23 in fact occur: CTC lobbying for one position; you and
24 Mr. Williams lobbying for another.

25 Let me talk to you about 108 and 116, which you
26 mentioned. Last January I sent the Governor a memorandum in
27 which I earnestly suggested that here is a situation in which
28

1 almost \$3 billion of debt has been incurred for purposes of
2 expenditures on rail capital improvements. The two railroads,
3 Southern Pacific and Santa Fe, have been aggressively pursuing
4 local entities, negotiating contracts, locality to locality, to
5 sell their rights away.

6 I suggested, I recommended, that the state -- this is
7 state money. It's taxpayers' money, but it's under the purview
8 of the state. The state is responsible for the proper
9 expenditure of it -- that the state take over the negotiating
10 with both of those railroads.

11 It hasn't been done. I've never even received an
12 official response to that suggestion.

13 In the meantime, I've had about 25 cities in Southern
14 California write me about having a hearing on how Santa Fe's
15 holding them up. I pointed out in that memorandum, as you know,
16 that there is economy of scale to be achieved over and above the
17 fact that it's the state's responsibility for the spending of
18 that taxpayers' money.

19 Why hasn't that been acted on? What's wrong with
20 that?

21 MR. COVITZ: Well, Senator Kopp, it's hard for me to
22 explain why you may not have received an answer from Governor
23 Wilson, but I can tell you --

24 SENATOR KOPP: I sent it to Governor Wilson. I
25 expect him to give it to you and say, "Take charge of this."
26 I've sent letters that have been responded to by Mr. Pierce, for
27 example, or I sent a letter to you that was responded to by
28

1 him. That's why you have a delegation of responsibility.

2 I'd like to know on the merits, why shouldn't the
3 state, which has the legal responsibility, assume all these
4 negotiations rather than letting the railroad companies just
5 pick off these local agencies? They have little incentive to
6 drive a hard bargain; it's money coming from the state.

7 MR. COVITZ: Yes, it is money coming from the state,
8 and it is also their own funds that is supplement the state
9 funds.

10 We feel that at this point, it's appropriate for the
11 local communities to continue the negotiation, and I have asked
12 the Caltrans people to evaluate those negotiations. I know that
13 you feel strongly that the activities in the San Francisco area
14 pertaining to the Southern Pacific are -- should be subject to
15 re-evaluation, and that is currently underway by Caltrans. We
16 will be sharing that information with the CTC, who has the
17 ultimate responsibility of determining whether the requests from
18 the local communities are appropriate.

19 So, whereas I might not agree with the suggestion
20 that it should be state negotiation, I certainly do concur with
21 you that it's appropriate for re-evaluation of some of these
22 negotiated purchase agreements.

23 SENATOR KOPP: What do you have as a plan to meet the
24 new emphasis on rail transit? Do have such a plan?

25 MR. COVITZ: Yes, we do. And I think it's embodied
26 in the passage of 108 and 116.

27 I personally feel that in most of the urban areas,
28

1 the freeway systems are saturated. I do not see opportunities
2 for expansion of freeways, and I think it is our challenge to
3 utilize alternative forms of transportation. And I see that
4 primarily in transit systems.

5 That is my personal opinion. That is a policy that
6 we are -- that we are directing Caltrans. And I would say
7 that, for the most part in many areas, in spite of the
8 commitments in the past to the freeway system, that rail
9 transit, light rail transit, will be the priority in the
10 districts. I believe it's happening in Southern California and
11 soon to happen in Northern California.

12 SENATOR KOPP: Well, let me just point out that 108
13 and 116 don't embody a plan. All they do is approve the
14 expenditure of money, but the state has to have a plan. The
15 Department has to have it; your Agency has to have it --

16 MR. COVITZ: Yes.

17 SENATOR KOPP: -- to carry it out.

18 MR. COVITZ: And Senator, that is -- that process is
19 well underway.

20 SENATOR KOPP: Let me ask you about the Department
21 itself and the organization of the Department.

22 We all know that it's got about 20,000 employees.
23 You have a budget of over \$5 billion. We put ourselves on the
24 line voting for gas tax increases, fuel -- I mean weight fee
25 increases, and the \$64 Question is delivery of transportation
26 projects.

27 It's been pointed out repeatedly that Caltrans has an
28

1 overhead of about 40% plus. That's without counting the
2 overhead that emanates from all the environmental regulations
3 and the like, which probably would take it over 60%.

4 One of the provisions in SB 300 set a target of
5 reducing that overhead to 20% in the next three fiscal years.
6 We're already into the second fiscal year.

7 It's a bureaucracy which was designed for the '50s,
8 in my opinion, and we're in the '90s.

9 Do you have a plan with respect to reorganizing that
10 Department, reducing the overhead?

11 MR. COVITZ: Senator, we're not prepared to focus on
12 reorganization right now. There are preliminary steps that must
13 be taken.

14 I believe that one of the first steps, and something
15 that we're pleased, is the availability of Jim van Loben Sels,
16 who has extensive experience in major public works
17 organizations, as you know, as Commanding General of the Corps
18 of Engineers. There is some degree of similarity in large
19 bureaucratic organizations, as with Caltrans. And for General
20 van Loben Sels --

21 SENATOR KOPP: But he's not coming to work until
22 October 1st.

23 MR. COVITZ: Right. And I believe that a
24 reorganization directed by -- I'm sorry, an evaluation directed
25 by General van Loben Sels will be the first order of business.

26 Number two is that the Governor has committed to a
27 management evaluation very much similar to the Grace Commission
28

1 that was done on the federal level. And Caltrans is the
2 priority of that evaluation.

3 SENATOR KOPP: What can we expect by way of a time
4 within which the evaluation is conducted and completed?

5 MR. COVITZ: I'd like to believe that with the advent
6 of Jim van Loben Sels, it will begin promptly.

7 SENATOR KOPP: And finished when?

8 MR. COVITZ: I'd be reluctant to give you a date
9 right now, but as soon as we've had an opportunity to evaluate
10 it, we'll come back.

11 I would agree that it's quite appropriate for an
12 evaluation of the organization and structure of Caltrans.

13 SENATOR KOPP: As you know, I carried a bill at the
14 request of the administration, SB 184, which had the happy
15 purpose of raising everybody's driver's license and vehicle
16 registration fee because the motor vehicle fund had been raided
17 for about \$40 million because of the budget gap, and it was
18 represented that more money was needed for CHP operations.

19 First of all let me say to you that -- the Members
20 might be interested in this -- I've never had the experience
21 that I had with that bill in the Assembly, where one evening
22 about 7:30, I was sitting in my office, and I get a call from
23 the Sergeant of the Assembly Transportation Committee that SB
24 184 is up. That's how I found out about it.

25 Let me correct that. It was the Assembly Ways and
26 Means Committee. The bill had been taken up off the Assembly
27 Floor by the Transportation Committee the day before, or
28

1 something, with no notice to me, the author. And then I just
2 happened to be in the office with the Sergeant-at-arms called.

3 I'm just curious as to who was in charge of that
4 particular matter?

5 MR. COVITZ: I couldn't say, Senator. I'll be glad
6 to look into it and get back to you. I do not know at that time
7 who was coordinating the process of the bill.

8 SENATOR KOPP: To continue, as I think you know, I've
9 had to write -- I had to call a couple times, then I had to
10 write a couple letters specifically because I wanted to be
11 assured, and I wanted a commitment, that that money which we're
12 taking additionally from taxpayers would go in to increasing CHP
13 enforcement of rules governing the operation of trucks on our
14 highways.

15 I'm curious as to -- I'm interested as to why it took
16 so long for that logical assurance and commitment to be given?

17 MR. COVITZ: I believe it was communicated to you as
18 well as the assurances.

19 SENATOR KOPP: After a couple months. It took a
20 couple months for it to be communicated.

21 MR. COVITZ: I believe that it was always intended,
22 and perhaps the deficiency was in the communication too you. We
23 concurred with you that that was an appropriate utilization of
24 the funding.

25 SENATOR KOPP: Let me ask this question in that very
26 regard. I'll tell you, an awful lot of people who used to think
27 I was a fiscal conservative aren't very happy with me because of
28

1 that bill and one or two others.

2 As you know, the Highway Patrol has provided me with
3 about three or four pages of incidents in which the CHP had to
4 provide transportation service to you, members of your family,
5 and the like. You've seen that letter, and you've seen the
6 recitation of all of those.

7 My question is, do you think it's appropriate, now
8 that we've raised these fees to replenish and increase the CHP
9 coffers, for those purposes?

10 MR. COVITZ: Yes, Senator, I have seen the letter,
11 and I'd like to share with you that the procedures have changed
12 over time as I have become more familiar with the CHP and its
13 process.

14 For instance, the CHP does provide a protective and
15 transportation detail of plainclothes on a regular basis to the
16 Governor and Lieutenant Governor, and on a more infrequent basis
17 to other executive branch officials, Members of the Legislature,
18 and agency and department.

19 Recently I made the determination that I would not
20 utilize that service. I felt that my needs, which are basically
21 to provide transportation to and from the airport, can be most
22 efficiently provided by an officer where that patrol unit is on
23 duty within what amounts to five or ten minutes of that
24 location. And so, I have elected not to use it except for very
25 special occasions. And I think it has become less and less
26 frequent in my use of it.

27 So, I am comfortable that -- and incidentally, only
28

1 on official business. So, I do believe that we are -- I use it
2 at -- with discretion and at appropriate times.

3 SENATOR KOPP: Well, was it official business to pick
4 your wife and you up at LAX arriving from Yuma?

5 MR. COVITZ: Yes, it was. I was with the Governor on
6 our visit to the Board of Governors Conference. It happened to
7 be Yuma because that was the location where the Governor and I
8 stopped for customs.

9 SENATOR KOPP: Who is John Pimentel?

10 MR. COVITZ: John Pimentel is a special assistant
11 that works in the office.

12 SENATOR KOPP: How about the use of the Caltrans
13 helicopter to watch the parade for veterans returning from
14 Desert Storm? Is that an appropriate or proper use of gas tax
15 money?

16 MR. COVITZ: Yes, Senator, I believe so. That's not
17 quite the appropriate representation.

18 What had happened was that I did hear that the --
19 there was a -- referred to in Southern California as a Sig
20 Alert, an area of freeway congestion, because of a parade. And
21 knowing that both the Highway Patrol and Caltrans were involved
22 in that situation, I went over to see it. I asked to be brought
23 to the scene by the Highway Patrol because I was interested in
24 seeing the effect of it.

25 I might add that when I arrived at the scene, I was
26 offered the opportunity of sitting in the VIP section area to
27 watch the parade. We arrived late; the parade was almost over.
28

1 I said that I was not there basically to see the parade. If I
2 were, I would have sat in the VIP section. I was there to see
3 Caltrans and Highway Patrol in operation.

4 When I was there, a Highway Patrolman mentioned that
5 Caltrans had a helicopter in the air whose purpose was to
6 coordinate the activities of Highway Patrol and Caltrans,
7 particularly as it related to the congestion of the freeway
8 activity, and offered me the opportunity to go up and observe
9 from the air.

10 I can tell you, Senator, that you can't see much of a
11 parade from the air. So, that which I observed was Caltrans in
12 operation, the impact of that kind of an activity on the freeway
13 system, as well as the activity of the Highway Patrol both of
14 which were -- are my responsibilities and I felt quite
15 comfortable in observing.

16 SENATOR KOPP: Well, the report on it indicated that
17 there were other people with you.

18 MR. COVITZ: Yes.

19 SENATOR KOPP: Three guests.

20 MR. COVITZ: Yes, my wife, and child, and perhaps a
21 friend of his. It turned out that they were in the car with me,
22 and they did accompany me on the helicopter.

23 SENATOR KOPP: The CHP Commissioner states that
24 there's assigned to you a 1991 Ford Crown Victoria, license
25 number 2UHT887.

26 About seven or eight years ago, I'm informed there
27 was legislation to authorize agency secretaries to use state
28

1 vehicles without a Diamond E license, and that bill was defeated
2 in the Senate.

3 Don't you think that you're subject the existing law
4 which relates to the use of vehicles, namely use the Diamond E
5 license plate vehicles?

6 MR. COVITZ: Yes, well, my understanding, Senator, is
7 that that car is the backup car for the Governor's protective
8 detail. And consequently, as a policy vehicle, and as you know,
9 it is equipped with a Highway Patrol radio, lights and sirens.

10 SENATOR KOPP: Those are described, think, deftly in
11 this fashion: "These vehicles are also equipped for the purpose
12 of responding to an emergency if such vehicle is operated by a
13 sworn member of the CHP."

14 That means they have the red lights and sirens.

15 MR. COVITZ: Right. That's not for my use; that's
16 for the CHP's use.

17 SENATOR KOPP: I just have a couple of other
18 questions that pertain to the Agency itself and I think are
19 fundamental because, as I started out, business and housing are
20 two subjects important. Transportation, in my view, is equally
21 if not more important.

22 I have suggested, and you're privy to that letter to
23 the Governor, that the Agency be reorganized, and that
24 transportation be established as a separate agency.

25 We've asked the voters to put themselves in debt.
26 We've increased their taxes, just about everything relating to a
27 vehicle, gas, driver's license, the vehicle registration, the in
28

1 lieu of a personal property tax, a charge on vehicles.

2 Don't you really think that transportation should be
3 a separate agency?

4 MR. COVITZ: Senator, I think that the structure of
5 the executive branch is the prerogative of the Governor to
6 decide. And I think that he has decided that he's comfortable
7 with the structure as it exists today.

8 That's not to say that there shouldn't be an
9 evaluation and reconsideration in the future. And I think to
10 the extent that Grace Commission activity, which will evaluate
11 all major sectors of the executive branch, might well make
12 recommendations and persuade the Governor otherwise.

13 SENATOR KOPP: Well, it could be done legislatively,
14 too. What would your recommendation be if a bill was
15 introduced?

16 MR. COVITZ: I'd have to evaluate the bill. I think
17 that the transportation priorities, transportation
18 implementation of programs, can be accomplished under the
19 existing structure with dedicated people.

20 SENATOR KOPP: Finally, let me observe for your
21 benefit and the benefit of the Members of the Committee and the
22 public that this year, Caltrans, CHP, and the Department of
23 Motor Vehicles had no approved positions on the most important
24 bills presented to the Senate Committee on Transportation.

25 Is there some reason or reasons for the failure to
26 have approved positions?

27 MR. COVITZ: No, not at all.
28

1 I think that we do take positions on all types of
2 legislation. It is in conjunction with the Governor's
3 Legislative Office, and we will continue to evaluate each one
4 individually and make a determination.

5 CHAIRMAN ROBERTI: Let me stop you right there,
6 Senator.

7 I have a number of questions. I think some of the
8 other Members of the Committee do, and I think there are people
9 who wish to testify.

10 I would like to complete the hearing, but I don't
11 know if we have time to do it today. I would like to complete
12 it, hopefully, this week.

13 My suggestion is that we break at 5:00, which is now,
14 and come back some other time, another time this week, just to
15 hear the Covitz appointment.

16 MS. MICHEL: Do you want to set a time specific? I
17 don't know whether there's anyone here to testify. You can find
18 that out.

19 CHAIRMAN ROBERTI: How many are here to testify on
20 the appointment? That's good. It makes me feel better.

21 My problem is that I have an appointment at 5:00
22 o'clock.

23 Why don't we carry this over until tomorrow? We'll
24 try to expedite this.

25 MS. MICHEL: Time to be announced?

26 CHAIRMAN ROBERTI: We're in session. I think
27 everybody -- 1:00 o'clock tomorrow.
28

1 We have to waive which rule? Senator Craven moves
2 that we waive Joint Rules 62(a), recommended waiver, so that we
3 can meet tomorrow at 1:00 o'clock for Covitz and anything we
4 have in Executive Session. Covitz will be taken up first, just
5 continue the Committee.

6 MS. MICHEL: Senator Roberti, you have another
7 Governor's Appointee required to appear. Do you want to hold
8 that over until tomorrow?

9 CHAIRMAN ROBERTI: Ms. Belshe.

10 MS. MICHEL: Tomorrow or next week?

11 CHAIRMAN ROBERTI: Better next week. I don't want
12 her waiting. We'll take her up for sure next week.

13 Senator Craven moves. Any discussion or debate? Any
14 opposition? Hearing none, such will be the order. The
15 recommendation will be on the Floor. We will reconvene at 1:00
16 o'clock tomorrow.

17 I'm sorry, but we will get through this.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 4:57 P.M.]

22 --oo0oo--
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1 P-R-O-C-E-E-D-I-N-G-S [September 5, 1991]

2 --oo0oo--

3 SENATOR CRAVEN: Here is Senator Calderon. Let us at
4 this juncture resume the hearing for confirmation as relates to
5 Carl D. Covitz, Secretary of the Business, Transportation and
6 Housing Agency. We recessed yesterday, and this a continuation
7 of that original meeting.

8 We have with us now Senator Calderon, who wishes to
9 ask the Secretary some questions.

10 SENATOR CALDERON: Mr. Chairman and Members of the
11 Committee, thank you for this courtesy.

12 Mr. Covitz, it's a pleasure to see you again. My
13 agenda is very simple. You clearly know what the issue is; it's
14 the extension of the 710 freeway.

15 As you are well aware, the history of that final six-
16 mile completion extends back to 1947. So, for over 30 years,
17 we've been attempting to shepherd this project through and
18 complete that freeway.

19 We now -- we were unable to move a great distance,
20 but we moved somewhat in the previous administration. Now with
21 the new administration, we are at a process where we are waiting
22 for the Federal Department of Highways, the administration, to
23 act on the final Environmental Impact Statement, which, when
24 they do, it will allow the state then to go back into court and
25 perhaps remove an injunction that was placed by opponents of the
26 710 project. Because one of the requirements -- one of the
27 bases for the issuance of the injunction was that the
28

1 Environmental Impact Statement must be filed, that CEQA must be
2 complied with.

3 That, of course, will not clear the way for the
4 project to go through, because I'm sure then there'll be
5 challenges by opponents, namely representatives from South
6 Pasadena and the city, to challenge the sufficiency of the EIS.

7 I'm interested, and have been since I've been
8 elected, to simply have the project move step-by-step, slow but
9 sure. I'm embarrassed that it's taken this long, but if that's
10 the world I have to live in, then we have to make do.

11 The Environmental Impact Statement submitted by
12 Caltrans -- and I've got a summary here of the Environmental
13 Impact Statement -- where Caltrans has recommended that the
14 meridian variation be approved; that that is the particular
15 route that will mitigate the impact in terms of historical
16 sites, in terms of parks, and in terms of relocation of
17 residents.

18 I also am informed now that there is nothing
19 forthcoming in terms of final approval. That statement was
20 supposed to have been approved by the Federal Highway
21 Administration back in June. And it is now September, and
22 there doesn't seem to be -- there seems to be a certain amount
23 of inertia, either from the Federal Department or from the
24 state, to keep that project going forward.

25 I'm interested in that Environmental Impact Statement
26 being acted upon. And I'm interested in Caltrans taking a
27 leadership role consistent with the recommendation that they
28

1 have made in the Environmental Impact Statement.

2 Recently I'm aware that you have viewed the site.
3 You've toured it from the air, on the ground. You've spoken
4 with representatives from the opposition side, representatives
5 from the City of Alhambra, on the support side, amongst others.
6 And I'm really desirous of at least the continued forward
7 progress of this project and some kind of statement being
8 released from the Federal Highway Administration.

9 What is your position, now, in light of that
10 background?

11 SENATOR BEVERLY: Could we have the question again?

12 [Laughter.]

13 MR. COVITZ: I was about to say, Senator, that I'm
14 sure there was a question in there, somewhere.

15 Yes, 30 years is a long time to wait for resolution
16 of this issue. As you well know, Caltrans is a very aggressive
17 proponent of completion of the freeway in a form that allows the
18 system to absorb the needs of the transportation requirement for
19 the area. And that system includes not only the freeway, but
20 the HOV lanes that are an integral part of it.

21 I personally have become involved. As you've
22 indicated, I have flown over the site. I have driven by the
23 site and through the site, and I have met with both the
24 proponents and the opponents of the project. And I even
25 accompanied Secretary Sam Skinner from the U.S. Department of
26 Transportation on a helicopter tour of the site.

27 My impression is now that there should be a
28

1 combination of a federal and state resolution of the means for
2 moving forward within 30 days. I understand that it had been
3 expected earlier this year, perhaps in the spring or early
4 summer. Generally, the press of other business -- budget
5 business and vacations -- tend to interfere with that.

6 So, I do believe that that a 30-day time frame is
7 reasonable at this point.

8 At that, I would expect a position that would be an
9 opportunity to move forward for resolution.

10 SENATOR CALDERON: I'm not even asking you to take a
11 position on the controversial issue; although, probably that's
12 something that only you can take into account in terms of what
13 your future action is going to be.

14 But I'm interested in that EIS going forward. And
15 I'm willing to take you on your word that a resolution and
16 ultimate action on the EIS will be forthcoming in 30 days.

17 Let me ask this: if there is no action in 30 days,
18 would you have any objection to sending a demand letter to the
19 Federal Highway Administration requesting that they take some
20 action on the approval process with respect to the EIS?

21 MR. COVITZ: No, sir, I wouldn't. I do believe that
22 between the federal involvement and the state involvement at
23 this point, that there are enough people dealing with the issue
24 that it should be within 30 days. I would have no problem in
25 attempting to force the issue if it were not resolved by then.

26 In terms of a position, as you know, Caltrans is a
27 department over which I control, and Caltrans is a very strong
28

1 supporter of a solution to completion of the freeway.

2 Without pre-empting an administration position, you
3 have to assume that the Caltrans position is something that I
4 would have to support in one fashion or another.

5 I think there are means of negotiating a settlement
6 that should be satisfactory to all concerned.

7 SENATOR CALDERON: Thank you, Mr. Covitz.

8 Mr. Chairman, thank you for the opportunity to ask
9 these questions.

10 SENATOR CRAVEN: You're entirely welcome, Senator
11 Calderon. Thank you for your appearance.

12 Next, Senator Bill Lockyer.

13 SENATOR LOCKYER: Mr. Covitz may or may not wish to
14 respond. I just want to make known my opposition to his
15 confirmation.

16 And I guess the question it poses for me, and perhaps
17 others, is to what extent it is valid for Members of the
18 Legislature to vote no on gubernatorial nominees because of our
19 philosophical differences.

20 The specific issue that I want to add to the record
21 is toll roads. Now, my colleagues have heard me at length at
22 different times on toll roads, so I apologize for sounding like
23 a one-string guitar, but I'm distressed by the attitudes of the
24 Secretary, and to the extent that they reflect the
25 administration, of the administration.

26 I passed out to you the bills -- information
27 regarding the measure by Assemblyman Baker which authorized four
28

1 privately owned or leased toll roads to be constructed in the
2 State of California. And as you know, looking, if you will, at
3 Page -- the actual second page of the bill, which like the third
4 or fourth page of the material, I have yellowed there the
5 provisions of the bill, and then after that, the provisions in
6 the Transportation Committee analysis, and again in the Third
7 Reading analysis where we were given assurances that these
8 private toll roads would be constructed entirely with private
9 funds.

10 Now, the ink was barely dry on the bill when we
11 discovered that Caltrans, and perhaps those higher in the
12 administration, flat out lied to us. They lied to us. And they
13 had documents urging the use of public taxpayers' funds to
14 subsidize these private developers.

15 I would think that particularly those who have been
16 associated with criticism of the use of government money to
17 unduly subsidize private developers would have greater
18 sensitivity to this issue than Mr. Covitz has demonstrated. I
19 had an opportunity to talk with him early in the year, expressed
20 my concerns about the fact that the Legislature has been lied to
21 consistently, that high members of his Department have been
22 lobbying in Washington, D.C. for change in the Federal Service
23 Transportation Act so that taxpayers' monies can be used to
24 subsidize private toll roads if the federal law changes. And
25 I'm told that his view is, it's fine. I'm told by him that it's
26 fine; that the social benefits are so extraordinary that we
27 should have taxpayers subsidize these private businesses.
28

1 I disagree. I think we were lied to. I'm angry
2 about the fact that we were lied to consistently.

3 Now we're told, "Well, that was the prior
4 administration. That was the Deukmejian group. That's not our
5 problem."

6 Well, I notice that the Wilson administration took
7 responsibility for cleaning up the Deukmejian budget deficit,
8 and that was the honorable and correct thing to do. And it
9 seems to me that this administration, much of which is a
10 carry-over, particularly in the -- not the Secretary level, but
11 a little bit further down -- much of it is a carry-over from the
12 previous administration. They ought to clean up the fact that
13 we were lied to. We were lied to again and again and again.

14 Look at that bill! It says four times, these will be
15 privately financed roads! The analyses says it. The Third
16 Reading File said it. And their publications and their
17 representations at the time of the bill were that these would be
18 privately financed.

19 Now we find they are aggressively in league with the
20 development community to get taxpayers to subsidize these
21 special toll road development projects.

22 I don't know any other way to get this administration
23 to care about the fact that this is a dreadful public policy and
24 will destroy the public road system in the State of California
25 over the long run, and to care about whether or not they're
26 truthful with Members of the Legislature, other than to say,
27 "We're going to vote no."
28

1 So, I'm going to vote no. That's my only purpose in
2 stopping by. It's not to interrogate him, play prosecutor, or
3 anything else, but simply to state that I'm dreadfully
4 disappointed by our conversation in early parts of the year,
5 where it was made clear to me that Mr. Covitz supports the use
6 of taxpayers' money for private toll road schemes.

7 So, we have both problems: a philosophical
8 disagreement; and what should the Legislature's recourse be when
9 high members, specifically the Director of Caltrans, lies to
10 Members of the Senate and the Assembly. What do we do about
11 that? I guess nothing.

12 I think we should do something about it.

13 SENATOR CRAVEN: Senator Lockyer.

14 SENATOR LOCKYER: Yes.

15 SENATOR CRAVEN: Yesterday there was some
16 conversation relative to lobbying, a lobbying effort in
17 Washington, some done by the Secretary, and other activity done
18 by CTC.

19 SENATOR LOCKYER: Carl Williams and his Department.

20 SENATOR CRAVEN: Yes.

21 And I was just wondering whether that's what your
22 reference was. Was that basically it?

23 SENATOR LOCKYER: Yes.

24 SENATOR CRAVEN: I'm sure the Secretary will want to
25 respond.

26 Mr. Covitz, do you want to comment?

27 MR. COVITZ: Yes.
28

1 Senator Lockyer, we did have that conversation early
2 on, and there is a difference of philosophy.

3 I don't claim credit for the prior administration's
4 activity. I don't -- can't speak to whether or not what
5 representations were made on AB 680 during its process.

6 I can say that we do support -- we, the
7 administration, the Wilson administration does support -- AB 680
8 for two rather very important reasons. One is that it is, we
9 believe, a classic example of a public-private partnership
10 working together to provide state services that otherwise would
11 not be available.

12 Secondly, there is some valid criticism that a toll
13 road is to the benefit of those that can afford to pay the toll,
14 which is true. To the same extent, those that elect to pay the
15 toll and use the road certainly relieve the pressure on the free
16 system, the freeway system.

17 We do believe that this a demonstration project, or
18 for a demonstration projects; that that will allow the
19 opportunity to evaluate the concept, to see if it should be
20 expanded in any way.

21 I do believe there is a difference of opinion. I
22 can't truly respond to the prior administration's promises or
23 representations.

24 In terms, Senator, of the lobbying effort in
25 Washington, we are requesting that the federal government
26 provide the availability of funding for toll roads for the very
27 same purpose, that it represents an opportunity for the state to
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1 bring in the private sector, and allow for creation of roads and
2 transit systems that would otherwise not be available without
3 their financial resources.

4 SENATOR LOCKYER: If I may just briefly respond,
5 Mr. President.

6 I don't think it would be fair to burden you with a
7 protracted policy debate, but, you know, we're told that somehow
8 this is a private-public partnership. This is the kind of
9 partnership I'd sure like to get into if I'm the private side of
10 it; that is, the risk is shifted to the public, and
11 extraordinary profits -- in the range of 24 percent -- are
12 granted, with monopoly territories, and air rights, and a whole
13 lot of other things that were secretly negotiated by Caltrans.
14 It's a great private-public partnership if you think that the
15 public fisc should be made available to development interests
16 who don't want to be burdened with risks of normal development.

17 Whether it relieves pressure on a freeway to have
18 rich people have a private road, well, I guess to some extent it
19 does. I find it is fundamentally offensive to my egalitarian
20 sentiments as any I can think of, that somehow or another, a
21 rich person should be able to pay \$14 for the contemplated
22 freeway for each trip, one way, about 14 bucks, and that's tax
23 deductible, so that we all get to subsidize that through our tax
24 dollars, indirectly, because most of them will be business
25 deducting it, and then the benefit we get is, well, gee, that
26 rich guy won't be over with his Mercedes on the regular freeway.
27 Thanks alot. I'm relieved to learn that.
28

1 So, it just seems to me -- and I don't know to what
2 extent it's legitimate to raise philosophical disagreements when
3 you want to vote no, and I probably wouldn't be here but for the
4 fact that we know we were lied to by the administration last
5 year. This ought to get corrected.

6 I think the current administration has a
7 responsibility to clean up what their predecessors did, and if
8 they don't want to -- I mean, if they wanted to come in with a
9 bill that says --

10 CHAIRMAN ROBERTI: Can I just interrupt?

11 SENATOR LOCKYER: Yes, sir.

12 CHAIRMAN ROBERTI: Just to make my point, Senator
13 Lockyer is 100 percent correct.

14 I don't think the issue of toll roads is a question
15 which you brought to us. It happened to be something, whether
16 you're in favor or not, it's pending while you're being
17 confirmed.

18 But I do think that it was a misstatement of the
19 truth -- I won't talk about what the intent was. That's whether
20 you say lie or not -- on the Senate Floor as to whether any
21 governmental monies would be utilized in the building of toll
22 roads. We were told that there would be no money used. With
23 that, I voted no, but did not use what powers of the President
24 Pro Tem that there are, you know, to make this the top item on
25 the agenda because I trusted the representations that were made.

26 And quite frankly, I think any candid observer will
27 say that the government funds are being used.
28

1 SENATOR LOCKYER: Now, you know, I don't know what to
2 do to clean that up. I don't know what the Legislature or the
3 Senate should do, other than exercising its potential leverage
4 in circumstances like this, to say: "We expect you to take care
5 of this and clean it up before we move forward on sensitive
6 appointments of this nature."

7 For that reason I hope you'll add that to the mix. I
8 personally intend to vote no. Obviously, if a majority of this
9 Committee votes for confirmation, that won't mean a thing, but
10 to my colleagues I say, "Colleagues, you can't let them lie to
11 us."

12 And believe me, it wasn't a mistake of fact. It was
13 an intentional -- there were documents printed prior to the bill
14 being signed by the Governor talking about the use of public
15 monies for these projects, printed by Caltrans.

16 Anyhow, I urge you to, as kind of a point of honor, I
17 think, to preserve some integrity of this process and system, to
18 hope get this administration to, as they responsibly did with
19 the budget mess, clean up the last year's mess from the previous
20 administration and get us started in a productive and positive
21 way.

22 I have no other reason to be concerned about
23 Mr. Covitz's confirmation, certainly none that are personal to
24 him, other than wanting to see some redress and not having any
25 other remedy that I'm aware of.

26 Thank you for this chance.

27 CHAIRMAN ROBERTI: Senator Petris.
28

1 SENATOR PETRIS: I would remind our colleagues and
2 inform Mr. Covitz that on this question of deception, Senator
3 Lockyer's been a tiger. There is one issue that he hammers at
4 every year with great cause relating to tolls on the bridges,
5 because a promise was made -- before he was even born, so he
6 wasn't part of that promise -- when the bridges were built,
7 relating to the tolls, and whether there'd be additional tolls
8 or not. And they said when the bridge is paid off, no more
9 tolls. They've been going up ever since, and he fights that
10 fight simply on the basis that government shouldn't lie to the
11 people. And as you can see, he feels very strongly about this.

12 I think the policy question is also very important,
13 but that's really secondary to the main thing, because it
14 influenced votes, including the President's, as he just pointed
15 out, in passing those bills, which probably would not have
16 passed otherwise.

17 I think that has to be addressed. It's not your
18 fault. It's not Governor Wilson's fault. But maybe we should
19 get a statement from Governor Wilson. Where is he going on
20 this? Because once you're locked in, as he says, there's no
21 other remedy.

22 So I think, Mr. Chairman, we ought to find some way
23 to get an expression from the Governor on this problem, clear
24 the air instead of letting it fester.

25 CHAIRMAN ROBERTI: Well, I think we should; however,
26 I personally, now that Senator Lockyer's raised the point, can
27 think of a better lever than Mr. Covitz's appointment -- the
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1 Caltrans budget -- now that the point has been zeroed in on.

2 I mean, there was absolute and complete
3 misrepresentation. It was debated on the Floor, and there was
4 then documents beforehand, that we were just lied to.

5 SENATOR LOCKYER: Thank you for using the right word.

6 CHAIRMAN ROBERTI: We were lied to, and based on
7 that, as I said, I voted no. I don't like toll roads. I spoke
8 against it, but it's one thing for the President Pro Tem not
9 liking a bill, and it's quite something else just not liking a
10 bill, underscored.

11 SENATOR LOCKYER: It was a close vote even as it was.

12 CHAIRMAN ROBERTI: It was a close vote anyway, yes.
13 Thank you, Senator.

14 It wasn't until earlier this year that Senator
15 Lockyer approached me with the enormity of the question, and
16 that is, we were absolutely lied to as to the use of public
17 funds in order to get something through that they wanted.

18 Mr. Covitz was not part of that. Caltrans was.

19 SENATOR LOCKYER: Right, that's true.

20 But I'm here, you know, because I see the boss, who
21 philosophically still agrees that the correct policy is public
22 monies. I have a bill, of course, which is on the Assembly
23 Third Reading File, to prevent that. I've let it rest because
24 I'm concerned about a veto if this is the attitude of this
25 administration. I don't want to do something unproductive.

26 But I am very frustrated about it. I appreciate you
27 granting some time to raise the issue today.
28

1 CHAIRMAN ROBERTI: Thank you, Senator.

2 Any other questions?

3 Is there any opposition in the audience?

4 Then, Mr. Covitz, you can wrap it up and conclude.

5 Senator Torres, yes.

6 SENATOR TORRES: I'd just like to have equal time and
7 indicate to you that I would not like the 710 Freeway --

8 [Laughter.]

9 SENATOR TORRES: -- completed. The Cities of South
10 Pasadena and parts of Pasadena worked very hard to maintain
11 historical preservation in that area, and I have a scroll that
12 I've been waiting to give you and the Governor to indicate the
13 concern of my constituents regarding the deterioration and
14 destruction of a community, which is a community which has
15 already been declared a national preservation site.

16 I would just like to articulate my concerns on that
17 and hope to talk to you in the future.

18 Thank you, Mr. Chairman and Members.

19 CHAIRMAN ROBERTI: Senator Petris, you had another
20 question?

21 SENATOR PETRIS: I'm sorry, I was out. I've been in
22 committee presenting a bill.

23 There are a couple other areas. I talked privately
24 with Mr. Covitz, and we got some good areas of agreement in
25 housing in particular. But I didn't explore a couple of the
26 transportation things.

27 One of the matters I want to ask about is the use of
28

1 pesticides on the vegetation along the freeways. I have a
2 report here from the Planning and Conservation League that lists
3 a lot of bad stuff that's being used.

4 As one who's been carrying legislation regarding the
5 use of pesticides for a number of years, I'm concerned about it,
6 and I would ask you to tell me if any problem or complaint
7 regarding the use of certain substances has come to your
8 attention -- I realize you've been there a short time -- and if
9 it hasn't, then I want to urge you to look into it as quickly as
10 you can.

11 There are 27 chemicals that are being used; 22 of
12 them fall into the category of the data gaps, which means
13 officially the state has no information on whether or not these
14 particular poisons are cancer-causing or the type that cause
15 birth defects. We have legislation on the books that eliminate
16 them from the market if they don't file reports within a certain
17 time to close that data gap so that we know what the dangers are
18 and we know what we're dealing with. It's a danger to the
19 workers who apply it, and, of course, to people who live in the
20 area, and the motorists as well.

21 So, to go back to the first question, do you have any
22 information on the use of the substances in the freeway system?

23 MR. COVITZ: I'm familiar with the activity, Senator.
24 I am not aware of any specific pesticide that has created a
25 controversy or has been objected to.

26 On the other hand, I believe that Caltrans, as we
27 speak, is holding public hearings to deal with a wide range of
28

1 pesticides.

2 As you know, because of the diverse nature of the
3 Caltrans requirements across the state, they use a great many
4 different kinds of pesticides to deal with the issues in various
5 locations. And they have attempted to stay within the
6 guidelines of those acceptable.

7 Because of the controversy there are now being held
8 public hearings to assure that we not only comply with the
9 utilization of pesticides that are appropriate, but also re-
10 evaluate those that may not be on the prohibited list but may
11 cause some serious damage.

12 SENATOR PETRIS: Who's conducting that now? Is that
13 by contract, or is that some people in your shop?

14 MR. COVITZ: I believe it's being done directly by
15 Caltrans.

16 SENATOR PETRIS: Do they have communication with the
17 scientists in the other departments?

18 MR. COVITZ: If there are those that have some
19 concern, I'd be more than welcome -- I'd be more than glad to
20 direct them to the right people if they were to contact me
21 personally.

22 SENATOR PETRIS: Do we have a deadline for
23 accomplishing the results?

24 MR. COVITZ: Well, I'd suggest that they do it as
25 soon as they could, because I believe the public hearings are
26 underway now.

27 SENATOR PETRIS: Where are they being held?
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1 MR. COVITZ: Around the state, I believe, in two
2 different locations around the state.

3 But again, Senator Petris, I'd be glad to find out
4 more information. And if anyone has some concern about that,
5 and if they'd be willing to contact me directly at my office, I
6 will put them in touch with the appropriate personnel at
7 Caltrans.

8 SENATOR PETRIS: Well, I have concern and I'm
9 contacting you now.

10 I'm very concerned about having them identify these
11 22 out of 27 for the purpose of closing the gaps. That's
12 supposed to be done by another department as well, so there may
13 be a little overlapping there, but I'd rather have overlapping
14 than have a bunch of dangerous substances left out.

15 The ones we're talking about that are on the list are
16 among 200 of the most toxic that were selected by the Department
17 of Agriculture for the quickest ones to close up the gap.

18 So, I can supply you with some leads that would be
19 helpful, but I would urge you to jump on that as soon as you
20 can. Have your people, as soon as they get the hearings
21 completed, to contact the other agency which might be very
22 helpful to them in closing the gaps.

23 MR. COVITZ: We will do that, Senator.

24 SENATOR PETRIS: The other question on transportation
25 has to do with public transit. I guess in all areas in the
26 state now with any kind of an urban flavor, one of the leading
27 problems cited by people in polls is congestion and traffic. We
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1 see it here; we see it, you know, all over the state.

2 It seems to me that we're not devoting enough of our
3 resources in overall transportation to public transit. I
4 understand that in terms of personnel, only 1 percent of the
5 Caltrans people are working on transit.

6 I wonder if you're aware of this, and if you would
7 favor expanding that in order to accelerate our public transit
8 facilities as much as we can, or expand them in order to relive
9 both the congestion problem and the pollution problem that's
10 multiplied by the large number of vehicles? Is there anything
11 going on now that you're aware of in that direction?

12 MR. COVITZ: Yes, there is, Senator Petris.

13 I wasn't aware of the particular proportion of
14 Caltrans employees working on one or another or a combination of
15 both.

16 But so as you might know of our indication of its
17 priority, one of the attempts -- one of our objectives in
18 lobbying the federal reauthorization of the Highway Bill is to
19 provide the flexibility of the funding at state determination so
20 as to allow more funds available for transit.

21 My impression is that the transit commitments are
22 generally the local prerogative, and in fact, funded to a large
23 extent by local tax measures. Where we contribute -- we, the
24 state government and the federal government as well -- we would
25 like to see even more flexibility on federal dollars so that the
26 local determination of transit is a viable alternative in terms
27 of their funding requirements.
28

1 It is a priority. I see it as an opportunity for
2 greater utilization of the transit facilities that we have
3 available. For instance, it's quite natural for transit to be a
4 part of the existing freeway system. There is a right of way
5 there available to it.

6 And so, as you know, in Southern California, Los
7 Angeles, the major freeway construction, Century Freeway, will
8 provide for transit opportunities.

9 Planning for freeway construction in the future will
10 always include an alternative for light rail.

11 SENATOR PETRIS: Is that present policy?

12 MR. COVITZ: Where it's eligible, yes, it is.

13 SENATOR PETRIS: See, I encounter that in another
14 direction as well. Sometimes we have legislation regarding the
15 use of automobiles, restricting students. For example, in
16 contrast with Senator Dills' program, I think we're making a big
17 mistake leading our students to worship the automobile when
18 they're about six years old, and trying to give them a license
19 when they're 16. And study after study has shown that as soon
20 as the parents reward a high school kid for good grades by
21 giving him a car, the grades go down hill. It happens all over
22 the country. It happens here.

23 When I push something like that, the answer is,
24 "Well, it's okay for you city boys, but up here in the country,
25 we don't have an alternative method of getting to school or
26 work. We don't have public transit."

27 I notice, for example, in District One, there are 478
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1 Caltrans employees. There 2 devoted to transit. Therefore,
2 there isn't going to be much transit done up in that area.

3 There are similar figures in those rural areas where
4 they just don't have an alternative. So, we try to shape a
5 state policy in a good public policy direction and find a very
6 legitimate complaint, which is: you're pushing us in a
7 different direction, but we don't have the alternative available
8 that you do in other areas where there are more people.

9 District Two, 478 employees, only 1 working on
10 transit matters. And the figures are comparable all over the
11 state. That's why you come up with only one percent statewide.

12 So, I would like to have you look into that and see
13 how much we can increase the percentage, or make a larger pie if
14 necessary, to have more people devoted to the problem of
15 transit, to see what can be done in various areas. I don't
16 think we can go on just building freeways without the alternate
17 that you're talking about.

18 I'm glad to hear you say that we're going to add a
19 public transit feature, or some alternative feature, everytime a
20 new freeway is planned, which is fine.

21 I think that covers it. If we can get the answer on
22 pesticides and transit, that's a big jump.

23 Thank you.

24 CHAIRMAN ROBERTI: I have a question.

25 In my district, a number of law enforcement agencies
26 and businesses have urged minimal reductions in ABC staffing.
27 That's because of the proliferation of bars in the general
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1 neighborhood.

2 There's a concern that there's a reduction in
3 staffing at ABC. Is that the case? What are you planning to do
4 about it? How will you take up the slack if that's happening?

5 MR. COVITZ: Yes, Senator, we are forced to reduce
6 staff at ABC as part of the budget crisis in the state. It is
7 taking its fair share of personnel reduction, along with all
8 other general fund departments, and ABC is a general fund
9 department.

10 We have asked the Director to provide us with an
11 evaluation of the impact of that reduction. When that's
12 completed, we will determine whether or not it -- the mission of
13 the Department will suffer. We have not completed that, and at
14 this point, the only thing that I can say is that we are
15 expecting some reduction in staff at ABC. We hope to be able to
16 provide the same level of service, certainly, in priority of
17 being able to process applications, which are terribly important
18 for the economic environment, as well as enforcement of the
19 rules.

20 Until we have that final determination, I'm sorry I
21 can't answer the specific question. It will share its -- or, it
22 will suffer its reduction in staff along with all the other
23 state departments.

24 CHAIRMAN ROBERTI: Is there anyone here in support
25 before we go to a vote? Please come forward.

26 MR. READ: Thank you very much, Mr. Chairman and
27 Members. Aaron Read representing the California Association of
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1 Highway Patrolmen.

2 Each of you, I believe, received a letter from the
3 Association signed by its President, Andy Legg, and it is my
4 pleasure to be here and indicate to you the support for the
5 confirmation of Mr. Covitz.

6 In the short time that he's been Secretary, he has
7 shown, at least in our opinion, a strong interest in support of
8 the Department of the Highway Patrol. He has gone on
9 ride-alongs with our officers. We have gotten feedback from the
10 officers who have met him out in the field at accident scenes,
11 or other places, who generally conveyed to us a caring and
12 concern for the Department.

13 So, it's with that in mind that we're happy to be
14 here and lend our support.

15 CHAIRMAN ROBERTI: Thank you very much, Mr. Read.

16 Is there anyone else either in support or opposition?

17 Do I hear a motion?

18 SENATOR CRAVEN: So move.

19 CHAIRMAN ROBERTI: Senator Craven moves the
20 confirmation be recommended to the Floor, do pass.

21 I'd like to speak to the motion on two points --
22 three points.

23 The problem at HUD, I'm satisfied by all the evidence
24 that we have that you were not responsible for the problems that
25 occurred in the allocation of funds. And just to make sure that
26 we've done everything to be thorough, I want to hold your
27 nomination on the Floor, if you do get out today, until the last
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1 day because it is an important question. If someone wants to
2 come forward with something we may not know, that's why. It
3 will be the last day before we adjourn for the annual recess.
4 That's number one.

5 Number two, the points which Senator Kopp raised
6 yesterday -- I did not hear him today, and I don't know if he
7 was here -- I think are important. But I think they get to the
8 kind of things which I hope you will be sensitized to, as we all
9 are, holding public office. In going over the specifics, I
10 didn't see anything there that should preclude a vote for you,
11 but nevertheless, there are some errors in judgment that
12 sometimes Senators make, too -- in this case, you're the one
13 who's before us for confirmation -- that I really hope, for the
14 benefit of all of us in government, you rectify.

15 Number three is the question of toll roads, which I'm
16 almost as intense on the issue as Senator Lockyer is, but not
17 quite. I was willing to compromise where he wasn't. But more
18 important than how you stand on the toll roads, which decent
19 people can disagree on a question like that, is that we were
20 misled on the Floor. The information that we had absolutely was
21 contrary to what was already being planned by Caltrans. They
22 were planning to use public funds.

23 So, at some point before we vote on you, at least at
24 the bare minimum, I would like you and/or the Governor to
25 address that question. I'm putting you on notice that I think
26 the Caltrans budget has to be linked directly to Caltrans
27 veracity on that important question. And I intend to push that
28

1 case as we move along, because we were absolutely, and I think
2 Senator Lockyer's probably right, purposefully misled in order
3 to vote on what was considered to be an important package of
4 bills or projects, and it was felt that the only way that they
5 could get the votes in the Legislature was just not to tell the
6 truth, and they're probably right. And we, unfortunately,
7 believed them and the other proponents of the legislation.

8 But you weren't here at that time that those bills
9 were coming up, and I'm not about to hold your nomination over
10 that. It's not related to your conduct of your job.

11 Any other questions or observations on the motion?
12 Then the Secretary will call the roll.

13 SECRETARY WEBB: Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Senator Mello.

16 SENATOR MELLO: Aye.

17 SECRETARY WEBB: Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Senator Craven.

20 SENATOR CRAVEN: Aye.

21 SECRETARY WEBB: Senator Roberti.

22 CHAIRMAN ROBERTI: Aye.

23 The vote is five to zero; confirmation is
24 recommended to the Floor.

25 MR. COVITZ: Thank you, Mr. Chairman, Senators.

26 [Thereupon this portion of the
27 Senate Rules Committee hearing
28

1 was terminated at approximately
2 3:00 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of September, 1991.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

CARL D. COVITZ, Secretary
Business, Transportation and Housing

SENATOR CHARLES CALDERON

SENATOR BILL LOCKYER

SENATOR ART TORRES

AARON READ
California Association of Highway Patrolmen

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR CRAVEN: Here is Senator Calderon. Let us at this juncture resume the hearing for confirmation as relates to Carl D. Covitz, Secretary of the Business, Transportation and Housing Agency. We recessed yesterday, and this a continuation of that original meeting.

We have with us now Senator Calderon, who wishes to ask the Secretary some questions.

SENATOR CALDERON: Mr. Chairman and Members of the Committee, thank you for this courtesy.

Mr. Covitz, it's a pleasure to see you again. My agenda is very simple. You clearly know what the issue is; it's the extension of the 710 freeway.

As you are well aware, the history of that final six-mile completion extends back to 1947. So, for over 30 years, we've been attempting to shepherd this project through and complete that freeway.

We now -- we were unable to move a great distance, but we moved somewhat in the previous administration. Now with the new administration, we are at a process where we are waiting for the Federal Department of Highways, the administration, to act on the final Environmental Impact Statement, which, when they do, it will allow the state then to go back into court and perhaps remove an injunction that was placed by opponents of the 710 project. Because one of the requirements -- one of the bases for the issuance of the injunction was that the

1 Environmental Impact Statement must be filed, that CEQA must be
2 complied with.

3 That, of course, will not clear the way for the
4 project to go through, because I'm sure then there'll be
5 challenges by opponents, namely representatives from South
6 Pasadena and the city, to challenge the sufficiency of the EIS.

7 I'm interested, and have been since I've been
8 elected, to simply have the project move step-by-step, slow but
9 sure. I'm embarrassed that it's taken this long, but if that's
10 the world I have to live in, then we have to make do.

11 The Environmental Impact Statement submitted by
12 Caltrans -- and I've got a summary here of the Environmental
13 Impact Statement -- where Caltrans has recommended that the
14 meridian variation be approved; that that is the particular
15 route that will mitigate the impact in terms of historical
16 sites, in terms of parks, and in terms of relocation of
17 residents.

18 I also am informed now that there is nothing
19 forthcoming in terms of final approval. That statement was
20 supposed to have been approved by the Federal Highway
21 Administration back in June. And it is now September, and
22 there doesn't seem to be -- there seems to be a certain amount
23 of inertia, either from the Federal Department or from the
24 state, to keep that project going forward.

25 I'm interested in that Environmental Impact Statement
26 being acted upon. And I'm interested in Caltrans taking a
27 leadership role consistent with the recommendation that they
28

1 have made in the Environmental Impact Statement.

2 Recently I'm aware that you have viewed the site.
3 You've toured it from the air, on the ground. You've spoken
4 with representatives from the opposition side, representatives
5 from the City of Alhambra, on the support side, amongst others.
6 And I'm really desirous of at least the continued forward
7 progress of this project and some kind of statement being
8 released from the Federal Highway Administration.

9 What is your position, now, in light of that
10 background?

11 SENATOR BEVERLY: Could we have the question again?

12 [Laughter.]

13 MR. COVITZ: I was about to say, Senator, that I'm
14 sure there was a question in there, somewhere.

15 Yes, 30 years is a long time to wait for resolution
16 of this issue. As you well know, Caltrans is a very aggressive
17 proponent of completion of the freeway in a form that allows the
18 system to absorb the needs of the transportation requirement for
19 the area. And that system includes not only the freeway, but
20 the HOV lanes that are an integral part of it.

21 I personally have become involved. As you've
22 indicated, I have flown over the site. I have driven by the
23 site and through the site, and I have met with both the
24 proponents and the opponents of the project. And I even
25 accompanied Secretary Sam Skinner from the U.S. Department of
26 Transportation on a helicopter tour of the site.

27 My impression is now that there should be a
28

1 combination of a federal and state resolution of the means for
2 moving forward within 30 days. I understand that it had been
3 expected earlier this year, perhaps in the spring or early
4 summer. Generally, the press of other business -- budget
5 business and vacations -- tend to interfere with that.

6 So, I do believe that that a 30-day time frame is
7 reasonable at this point.

8 At that, I would expect a position that would be an
9 opportunity to move forward for resolution.

10 SENATOR CALDERON: I'm not even asking you to take a
11 position on the controversial issue; although, probably that's
12 something that only you can take into account in terms of what
13 your future action is going to be.

14 But I'm interested in that EIS going forward. And
15 I'm willing to take you on your word that a resolution and
16 ultimate action on the EIS will be forthcoming in 30 days.

17 Let me ask this: if there is no action in 30 days,
18 would you have any objection to sending a demand letter to the
19 Federal Highway Administration requesting that they take some
20 action on the approval process with respect to the EIS?

21 MR. COVITZ: No, sir, I wouldn't. I do believe that
22 between the federal involvement and the state involvement at
23 this point, that there are enough people dealing with the issue
24 that it should be within 30 days. I would have no problem in
25 attempting to force the issue if it were not resolved by then.

26 In terms of a position, as you know, Caltrans is a
27 department over which I control, and Caltrans is a very strong
28

1 supporter of a solution to completion of the freeway.

2 Without pre-empting an administration position, you
3 have to assume that the Caltrans position is something that I
4 would have to support in one fashion or another.

5 I think there are means of negotiating a settlement
6 that should be satisfactory to all concerned.

7 SENATOR CALDERON: Thank you, Mr. Covitz.

8 Mr. Chairman, thank you for the opportunity to ask
9 these questions.

10 SENATOR CRAVEN: You're entirely welcome, Senator
11 Calderon. Thank you for your appearance.

12 Next, Senator Bill Lockyer.

13 SENATOR LOCKYER: Mr. Covitz may or may not wish to
14 respond. I just want to make known my opposition to his
15 confirmation.

16 And I guess the question it poses for me, and perhaps
17 others, is to what extent it is valid for Members of the
18 Legislature to vote no on gubernatorial nominees because of our
19 philosophical differences.

20 The specific issue that I want to add to the record
21 is toll roads. Now, my colleagues have heard me at length at
22 different times on toll roads, so I apologize for sounding like
23 a one-string guitar, but I'm distressed by the attitudes of the
24 Secretary, and to the extent that they reflect the
25 administration, of the administration.

26 I passed out to you the bills -- information
27 regarding the measure by Assemblyman Baker which authorized four
28

1 privately owned or leased toll roads to be constructed in the
2 State of California. And as you know, looking, if you will, at
3 Page -- the actual second page of the bill, which like the third
4 or fourth page of the material, I have yellowed there the
5 provisions of the bill, and then after that, the provisions in
6 the Transportation Committee analysis, and again in the Third
7 Reading analysis where we were given assurances that these
8 private toll roads would be constructed entirely with private
9 funds.

10 Now, the ink was barely dry on the bill when we
11 discovered that Caltrans, and perhaps those higher in the
12 administration, flat out lied to us. They lied to us. And they
13 had documents urging the use of public taxpayers' funds to
14 subsidize these private developers.

15 I would think that particularly those who have been
16 associated with criticism of the use of government money to
17 unduly subsidize private developers would have greater
18 sensitivity to this issue than Mr. Covitz has demonstrated. I
19 had an opportunity to talk with him early in the year, expressed
20 my concerns about the fact that the Legislature has been lied to
21 consistently, that high members of his Department have been
22 lobbying in Washington, D.C. for change in the Federal Service
23 Transportation Act so that taxpayers' monies can be used to
24 subsidize private toll roads if the federal law changes. And
25 I'm told that his view is, it's fine. I'm told by him that it's
26 fine; that the social benefits are so extraordinary that we
27 should have taxpayers subsidize these private businesses.
28

1 I disagree. I think we were lied to. I'm angry
2 about the fact that we were lied to consistently.

3 Now we're told, "Well, that was the prior
4 administration. That was the Deukmejian group. That's not our
5 problem."

6 Well, I notice that the Wilson administration took
7 responsibility for cleaning up the Deukmejian budget deficit,
8 and that was the honorable and correct thing to do. And it
9 seems to me that this administration, much of which is a
10 carry-over, particularly in the -- not the Secretary level, but
11 a little bit further down -- much of it is a carry-over from the
12 previous administration. They ought to clean up the fact that
13 we were lied to. We were lied to again and again and again.

14 Look at that bill! It says four times, these will be
15 privately financed roads! The analyses says it. The Third
16 Reading File said it. And their publications and their
17 representations at the time of the bill were that these would be
18 privately financed.

19 Now we find they are aggressively in league with the
20 development community to get taxpayers to subsidize these
21 special toll road development projects.

22 I don't know any other way to get this administration
23 to care about the fact that this is a dreadful public policy and
24 will destroy the public road system in the State of California
25 over the long run, and to care about whether or not they're
26 truthful with Members of the Legislature, other than to say,
27 "We're going to vote no."
28

1 So, I'm going to vote no. That's my only purpose in
2 stopping by. It's not to interrogate him, play prosecutor, or
3 anything else, but simply to state that I'm dreadfully
4 disappointed by our conversation in early parts of the year,
5 where it was made clear to me that Mr. Covitz supports the use
6 of taxpayers' money for private toll road schemes.

7 So, we have both problems: a philosophical
8 disagreement; and what should the Legislature's recourse be when
9 high members, specifically the Director of Caltrans, lies to
10 Members of the Senate and the Assembly. What do we do about
11 that? I guess nothing.

12 I think we should do something about it.

13 SENATOR CRAVEN: Senator Lockyer.

14 SENATOR LOCKYER: Yes.

15 SENATOR CRAVEN: Yesterday there was some
16 conversation relative to lobbying, a lobbying effort in
17 Washington, some done by the Secretary, and other activity done
18 by CTC.

19 SENATOR LOCKYER: Carl Williams and his Department.

20 SENATOR CRAVEN: Yes.

21 And I was just wondering whether that's what your
22 reference was. Was that basically it?

23 SENATOR LOCKYER: Yes.

24 SENATOR CRAVEN: I'm sure the Secretary will want to
25 respond.

26 Mr. Covitz, do you want to comment?

27 MR. COVITZ: Yes.
28

1 Senator Lockyer, we did have that conversation early
2 on, and there is a difference of philosophy.

3 I don't claim credit for the prior administration's
4 activity. I don't -- can't speak to whether or not what
5 representations were made on AB 680 during its process.

6 I can say that we do support -- we, the
7 administration, the Wilson administration does support -- AB 680
8 for two rather very important reasons. One is that it is, we
9 believe, a classic example of a public-private partnership
10 working together to provide state services that otherwise would
11 not be available.

12 Secondly, there is some valid criticism that a toll
13 road is to the benefit of those that can afford to pay the toll,
14 which is true. To the same extent, those that elect to pay the
15 toll and use the road certainly relieve the pressure on the free
16 system, the freeway system.

17 We do believe that this a demonstration project, or
18 for a demonstration projects; that that will allow the
19 opportunity to evaluate the concept, to see if it should be
20 expanded in any way.

21 I do believe there is a difference of opinion. I
22 can't truly respond to the prior administration's promises or
23 representations.

24 In terms, Senator, of the lobbying effort in
25 Washington, we are requesting that the federal government
26 provide the availability of funding for toll roads for the very
27 same purpose, that it represents an opportunity for the state to
28

1 bring in the private sector, and allow for creation of roads and
2 transit systems that would otherwise not be available without
3 their financial resources.

4 SENATOR LOCKYER: If I may just briefly respond,
5 Mr. President.

6 I don't think it would be fair to burden you with a
7 protracted policy debate, but, you know, we're told that somehow
8 this is a private-public partnership. This is the kind of
9 partnership I'd sure like to get into if I'm the private side of
10 it; that is, the risk is shifted to the public, and
11 extraordinary profits -- in the range of 24 percent -- are
12 granted, with monopoly territories, and air rights, and a whole
13 lot of other things that were secretly negotiated by Caltrans.
14 It's a great private-public partnership if you think that the
15 public fisc should be made available to development interests
16 who don't want to be burdened with risks of normal development.

17 Whether it relieves pressure on a freeway to have
18 rich people have a private road, well, I guess to some extent it
19 does. I find it is fundamentally offensive to my egalitarian
20 sentiments as any I can think of, that somehow or another, a
21 rich person should be able to pay \$14 for the contemplated
22 freeway for each trip, one way, about 14 bucks, and that's tax
23 deductible, so that we all get to subsidize that through our tax
24 dollars, indirectly, because most of them will be business
25 deducting it, and then the benefit we get is, well, gee, that
26 rich guy won't be over with his Mercedes on the regular
27 freeway. Thanks alot. I'm relieved to learn that.

1 So, it just seems to me -- and I don't know to what
2 extent it's legitimate to raise philosophical disagreements when
3 you want to vote no, and I probably wouldn't be here but for the
4 fact that we know we were lied to by the administration last
5 year. This ought to get corrected.

6 I think the current administration has a
7 responsibility to clean up what their predecessors did, and if
8 they don't want to -- I mean, if they wanted to come in with a
9 bill that says --

10 CHAIRMAN ROBERTI: Can I just interrupt?

11 SENATOR LOCKYER: Yes, sir.

12 CHAIRMAN ROBERTI: Just to make my point, Senator
13 Lockyer is 100 percent correct.

14 I don't think the issue of toll roads is a question
15 which you brought to us. It happened to be something, whether
16 you're in favor or not, it's pending while you're being
17 confirmed.

18 But I do think that it was a misstatement of the
19 truth -- I won't talk about what the intent was. That's whether
20 you say lie or not -- on the Senate Floor as to whether any
21 governmental monies would be utilized in the building of toll
22 roads. We were told that there would be no money used. With
23 that, I voted no, but did not use what powers of the President
24 Pro Tem that there are, you know, to make this the top item on
25 the agenda because I trusted the representations that were made.

26 And quite frankly, I think any candid observer will
27 say that the government funds are being used.
28

1 SENATOR LOCKYER: Now, you know, I don't know what to
2 do to clean that up. I don't know what the Legislature or the
3 Senate should do, other than exercising its potential leverage
4 in circumstances like this, to say: "We expect you to take care
5 of this and clean it up before we move forward on sensitive
6 appointments of this nature."

7 For that reason I hope you'll add that to the mix. I
8 personally intend to vote no. Obviously, if a majority of this
9 Committee votes for confirmation, that won't mean a thing, but
10 to my colleagues I say, "Colleagues, you can't let them lie to
11 us."

12 And believe me, it wasn't a mistake of fact. It was
13 an intentional -- there were documents printed prior to the bill
14 being signed by the Governor talking about the use of public
15 monies for these projects, printed by Caltrans.

16 Anyhow, I urge you to, as kind of a point of honor, I
17 think, to preserve some integrity of this process and system, to
18 hope get this administration to, as they responsibly did with
19 the budget mess, clean up the last year's mess from the previous
20 administration and get us started in a productive and positive
21 way.

22 I have no other reason to be concerned about
23 Mr. Covitz's confirmation, certainly none that are personal to
24 him, other than wanting to see some redress and not having any
25 other remedy that I'm aware of.

26 Thank you for this chance.

27 CHAIRMAN ROBERTI: Senator Petris.
28

1 SENATOR PETRIS: I would remind our colleagues and
2 inform Mr. Covitz that on this question of deception, Senator
3 Lockyer's been a tiger. There is one issue that he hammers at
4 every year with great cause relating to tolls on the bridges,
5 because a promise was made -- before he was even born, so he
6 wasn't part of that promise -- when the bridges were built,
7 relating to the tolls, and whether there'd be additional tolls
8 or not. And they said when the bridge is paid off, no more
9 tolls. They've been going up ever since, and he fights that
10 fight simply on the basis that government shouldn't lie to the
11 people. And as you can see, he feels very strongly about this.

12 I think the policy question is also very important,
13 but that's really secondary to the main thing, because it
14 influenced votes, including the President's, as he just pointed
15 out, in passing those bills, which probably would not have
16 passed otherwise.

17 I think that has to be addressed. It's not your
18 fault. It's not Governor Wilson's fault. But maybe we should
19 get a statement from Governor Wilson. Where is he going on
20 this? Because once you're locked in, as he says, there's no
21 other remedy.

22 So I think, Mr. Chairman, we ought to find some way
23 to get an expression from the Governor on this problem, clear
24 the air instead of letting it fester.

25 CHAIRMAN ROBERTI: Well, I think we should; however,
26 I personally, now that Senator Lockyer's raised the point, can
27 think of a better lever than Mr. Covitz's appointment -- the
28

1 Caltrans budget -- now that the point has been zeroed in on.

2 I mean, there was absolute and complete
3 misrepresentation. It was debated on the Floor, and there was
4 then documents beforehand, that we were just lied to.

5 SENATOR LOCKYER: Thank you for using the right word.

6 CHAIRMAN ROBERTI: We were lied to, and based on
7 that, as I said, I voted no. I don't like toll roads. I spoke
8 against it, but it's one thing for the President Pro Tem not
9 liking a bill, and it's quite something else just not liking a
10 bill, underscored.

11 SENATOR LOCKYER: It was a close vote even as it was.

12 CHAIRMAN ROBERTI: It was a close vote anyway, yes.
13 Thank you, Senator.

14 It wasn't until earlier this year that Senator
15 Lockyer approached me with the enormity of the question, and
16 that is, we were absolutely lied to as to the use of public
17 funds in order to get something through that they wanted.

18 Mr. Covitz was not part of that. Caltrans was.

19 SENATOR LOCKYER: Right, that's true.

20 But I'm here, you know, because I see the boss, who
21 philosophically still agrees that the correct policy is public
22 monies. I have a bill, of course, which is on the Assembly
23 Third Reading File, to prevent that. I've let it rest because
24 I'm concerned about a veto if this is the attitude of this
25 administration. I don't want to do something unproductive.

26 But I am very frustrated about it. I appreciate you
27 granting some time to raise the issue today.

1 CHAIRMAN ROBERTI: Thank you, Senator.

2 Any other questions?

3 Is there any opposition in the audience?

4 Then, Mr. Covitz, you can wrap it up and conclude.

5 Senator Torres, yes.

6 SENATOR TORRES: I'd just like to have equal time and
7 indicate to you that I would not like the 710 Freeway --

8 [Laughter.]

9 SENATOR TORRES: -- completed. The Cities of South
10 Pasadena and parts of Pasadena worked very hard to maintain
11 historical preservation in that area, and I have a scroll that
12 I've been waiting to give you and the Governor to indicate the
13 concern of my constituents regarding the deterioration and
14 destruction of a community, which is a community which has
15 already been declared a national preservation site.

16 I would just like to articulate my concerns on that
17 and hope to talk to you in the future.

18 Thank you, Mr. Chairman and Members.

19 CHAIRMAN ROBERTI: Senator Petris, you had another
20 question?

21 SENATOR PETRIS: I'm sorry, I was out. I've been in
22 committee presenting a bill.

23 There are a couple other areas. I talked privately
24 with Mr. Covitz, and we got some good areas of agreement in
25 housing in particular. But I didn't explore a couple of the
26 transportation things.

27 One of the matters I want to ask about is the use of
28

1 pesticides on the vegetation along the freeways. I have a
2 report here from the Planning and Conservation League that lists
3 a lot of bad stuff that's being used.

4 As one who's been carrying legislation regarding the
5 use of pesticides for a number of years, I'm concerned about it,
6 and I would ask you to tell me if any problem or complaint
7 regarding the use of certain substances has come to your
8 attention -- I realize you've been there a short time -- and if
9 it hasn't, then I want to urge you to look into it as quickly as
10 you can.

11 There are 27 chemicals that are being used; 22 of
12 them fall into the category of the data gaps, which means
13 officially the state has no information on whether or not these
14 particular poisons are cancer-causing or the type that cause
15 birth defects. We have legislation on the books that eliminate
16 them from the market if they don't file reports within a certain
17 time to close that data gap so that we know what the dangers are
18 and we know what we're dealing with. It's a danger to the
19 workers who apply it, and, of course, to people who live in the
20 area, and the motorists as well.

21 So, to go back to the first question, do you have any
22 information on the use of the substances in the freeway system?

23 MR. COVITZ: I'm familiar with the activity, Senator.
24 I am not aware of any specific pesticide that has created a
25 controversy or has been objected to.

26 On the other hand, I believe that Caltrans, as we
27 speak, is holding public hearings to deal with a wide range of
28

1 pesticides.

2 As you know, because of the diverse nature of the
3 Caltrans requirements across the state, they use a great many
4 different kinds of pesticides to deal with the issues in various
5 locations. And they have attempted to stay within the
6 guidelines of those acceptable.

7 Because of the controversy there are now being held
8 public hearings to assure that we not only comply with the
9 utilization of pesticides that are appropriate, but also re-
10 evaluate those that may not be on the prohibited list but may
11 cause some serious damage.

12 SENATOR PETRIS: Who's conducting that now? Is that
13 by contract, or is that some people in your shop?

14 MR. COVITZ: I believe it's being done directly by
15 Caltrans.

16 SENATOR PETRIS: Do they have communication with the
17 scientists in the other departments?

18 MR. COVITZ: If there are those that have some
19 concern, I'd be more than welcome -- I'd be more than glad to
20 direct them to the right people if they were to contact me
21 personally.

22 SENATOR PETRIS: Do we have a deadline for
23 accomplishing the results?

24 MR. COVITZ: Well, I'd suggest that they do it as
25 soon as they could, because I believe the public hearings are
26 underway now.

27 SENATOR PETRIS: Where are they being held?
28

1 MR. COVITZ: Around the state, I believe, in two
2 different locations around the state.

3 But again, Senator Petris, I'd be glad to find out
4 more information. And if anyone has some concern about that,
5 and if they'd be willing to contact me directly at my office, I
6 will put them in touch with the appropriate personnel at
7 Caltrans.

8 SENATOR PETRIS: Well, I have concern and I'm
9 contacting you now.

10 I'm very concerned about having them identify these
11 22 out of 27 for the purpose of closing the gaps. That's
12 supposed to be done by another department as well, so there may
13 be a little overlapping there, but I'd rather have overlapping
14 than have a bunch of dangerous substances left out.

15 The ones we're talking about that are on the list are
16 among 200 of the most toxic that were selected by the Department
17 of Agriculture for the quickest ones to close up the gap.

18 So, I can supply you with some leads that would be
19 helpful, but I would urge you to jump on that as soon as you
20 can. Have your people, as soon as they get the hearings
21 completed, to contact the other agency which might be very
22 helpful to them in closing the gaps.

23 MR. COVITZ: We will do that, Senator.

24 SENATOR PETRIS: The other question on transportation
25 has to do with public transit. I guess in all areas in the
26 state now with any kind of an urban flavor, one of the leading
27 problems cited by people in polls is congestion and traffic. We
28

1 see it here; we see it, you know, all over the state.

2 It seems to me that we're not devoting enough of our
3 resources in overall transportation to public transit. I
4 understand that in terms of personnel, only 1 percent of the
5 Caltrans people are working on transit.

6 I wonder if you're aware of this, and if you would
7 favor expanding that in order to accelerate our public transit
8 facilities as much as we can, or expand them in order to relive
9 both the congestion problem and the pollution problem that's
10 multiplied by the large number of vehicles? Is there anything
11 going on now that you're aware of in that direction?

12 MR. COVITZ: Yes, there is, Senator Petris.

13 I wasn't aware of the particular proportion of
14 Caltrans employees working on one or another or a combination of
15 both.

16 But so as you might know of our indication of its
17 priority, one of the attempts -- one of our objectives in
18 lobbying the federal reauthorization of the Highway Bill is to
19 provide the flexibility of the funding at state determination so
20 as to allow more funds available for transit.

21 My impression is that the transit commitments are
22 generally the local prerogative, and in fact, funded to a large
23 extent by local tax measures. Where we contribute -- we, the
24 state government and the federal government as well -- we would
25 like to see even more flexibility on federal dollars so that the
26 local determination of transit is a viable alternative in terms
27 of their funding requirements.

1 It is a priority. I see it as an opportunity for
2 greater utilization of the transit facilities that we have
3 available. For instance, it's quite natural for transit to be a
4 part of the existing freeway system. There is a right of way
5 there available to it.

6 And so, as you know, in Southern California, Los
7 Angeles, the major freeway construction, Century Freeway, will
8 provide for transit opportunities.

9 Planning for freeway construction in the future will
10 always include an alternative for light rail.

11 SENATOR PETRIS: Is that present policy?

12 MR. COVITZ: Where it's eligible, yes, it is.

13 SENATOR PETRIS: See, I encounter that in another
14 direction as well. Sometimes we have legislation regarding the
15 use of automobiles, restricting students. For example, in
16 contrast with Senator Dills' program, I think we're making a big
17 mistake leading our students to worship the automobile when
18 they're about six years old, and trying to give them a license
19 when they're 16. And study after study has shown that as soon
20 as the parents reward a high school kid for good grades by
21 giving him a car, the grades go down hill. It happens all over
22 the country. It happens here.

23 When I push something like that, the answer is,
24 "Well, it's okay for you city boys, but up here in the country,
25 we don't have an alternative method of getting to school or
26 work. We don't have public transit."

27 I notice, for example, in District One, there are 478
28

1 Caltrans employees. There 2 devoted to transit. Therefore,
2 there isn't going to be much transit done up in that area.

3
4 There are similar figures in those rural areas where
5 they just don't have an alternative. So, we try to shape a
6 state policy in a good public policy direction and find a very
7 legitimate complaint, which is: you're pushing us in a
8 different direction, but we don't have the alternative available
9 that you do in other areas where there are more people.

10 District Two, 478 employees, only 1 working on
11 transit matters. And the figures are comparable all over the
12 state. That's why you come up with only one percent statewide.

13 So, I would like to have you look into that and see
14 how much we can increase the percentage, or make a larger pie if
15 necessary, to have more people devoted to the problem of
16 transit, to see what can be done in various areas. I don't
17 think we can go on just building freeways without the alternate
18 that you're talking about.

19 I'm glad to hear you say that we're going to add a
20 public transit feature, or some alternative feature, everytime a
21 new freeway is planned, which is fine.

22 I think that covers it. If we can get the answer on
23 pesticides and transit, that's a big jump.

24 Thank you.

25 CHAIRMAN ROBERTI: I have a question.

26 In my district, a number of law enforcement agencies
27 and businesses have urged minimal reductions in ABC staffing.
28 That's because of the proliferation of bars in the general

1 neighborhood.

2 There's a concern that there's a reduction in
3 staffing at ABC. Is that the case? What are you planning to do
4 about it? How will you take up the slack if that's happening?

5 MR. COVITZ: Yes, Senator, we are forced to reduce
6 staff at ABC as part of the budget crisis in the state. It is
7 taking its fair share of personnel reduction, along with all
8 other general fund departments, and ABC is a general fund
9 department.

10 We have asked the Director to provide us with an
11 evaluation of the impact of that reduction. When that's
12 completed, we will determine whether or not it -- the mission of
13 the Department will suffer. We have not completed that, and at
14 this point, the only thing that I can say is that we are
15 expecting some reduction in staff at ABC. We hope to be able to
16 provide the same level of service, certainly, in priority of
17 being able to process applications, which are terribly important
18 for the economic environment, as well as enforcement of the
19 rules.

20 Until we have that final determination, I'm sorry I
21 can't answer the specific question. It will share its -- or, it
22 will suffer its reduction in staff along with all the other
23 state departments.

24 CHAIRMAN ROBERTI: Is there anyone here in support
25 before we go to a vote? Please come forward.

26 MR. READ: Thank you very much, Mr. Chairman and
27 Members. Aaron Read representing the California Association of
28

1 Highway Patrolmen.

2 Each of you, I believe, received a letter from the
3 Association signed by its President, Andy Legg, and it is my
4 pleasure to be here and indicate to you the support for the
5 confirmation of Mr. Covitz.

6 In the short time that he's been Secretary, he has
7 shown, at least in our opinion, a strong interest in support of
8 the Department of the Highway Patrol. He has gone on
9 ride-alongs with our officers. We have gotten feedback from the
10 officers who have met him out in the field at accident scenes,
11 or other places, who generally conveyed to us a caring and
12 concern for the Department.

13 So, it's with that in mind that we're happy to be
14 here and lend our support.

15 CHAIRMAN ROBERTI: Thank you very much, Mr. Read.

16 Is there anyone else either in support or opposition?

17 Do I hear a motion?

18 SENATOR CRAVEN: So move.

19 CHAIRMAN ROBERTI: Senator Craven moves the
20 confirmation be recommended to the Floor, do pass.

21 I'd like to speak to the motion on two points --
22 three points.

23 The problem at HUD, I'm satisfied by all the evidence
24 that we have that you were not responsible for the problems that
25 occurred in the allocation of funds. And just to make sure that
26 we've done everything to be thorough, I want to hold your
27 nomination on the Floor, if you do get out today, until the last
28

1 day because it is an important question. If someone wants to
2 come forward with something we may not know, that's why. It
3 will be the last day before we adjourn for the annual recess.
4 That's number one.

5 Number two, the points which Senator Kopp raised
6 yesterday -- I did not hear him today, and I don't know if he
7 was here -- I think are important. But I think they get to the
8 kind of things which I hope you will be sensitized to, as we all
9 are, holding public office. In going over the specifics, I
10 didn't see anything there that should preclude a vote for you,
11 but nevertheless, there are some errors in judgment that
12 sometimes Senators make, too -- in this case, you're the one
13 who's before us for confirmation -- that I really hope, for the
14 benefit of all of us in government, you rectify.

15 Number three is the question of toll roads, which I'm
16 almost as intense on the issue as Senator Lockyer is, but not
17 quite. I was willing to compromise where he wasn't. But more
18 important than how you stand on the toll roads, which decent
19 people can disagree on a question like that, is that we were
20 misled on the Floor. The information that we had absolutely was
21 contrary to what was already being planned by Caltrans. They
22 were planning to use public funds.

23 So, at some point before we vote on you, at least at
24 the bare minimum, I would like you and/or the Governor to
25 address that question. I'm putting you on notice that I think
26 the Caltrans budget has to be linked directly to Caltrans
27 veracity on that important question. And I intend to push that
28

1 case as we move along, because we were absolutely, and I think
2 Senator Lockyer's probably right, purposefully misled in order
3 to vote on what was considered to be an important package of
4 bills or projects, and it was felt that the only way that they
5 could get the votes in the Legislature was just not to tell the
6 truth, and they're probably right. And we, unfortunately,
7 believed them and the other proponents of the legislation.

8 But you weren't here at that time that those bills
9 were coming up, and I'm not about to hold your nomination over
10 that. It's not related to your conduct of your job.

11 Any other questions or observations on the motion?
12 Then the Secretary will call the roll.

13 SECRETARY WEBB: Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Senator Mello.

16 SENATOR MELLO: Aye.

17 SECRETARY WEBB: Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Senator Craven.

20 SENATOR CRAVEN: Aye.

21 SECRETARY WEBB: Senator Roberti.

22 CHAIRMAN ROBERTI: Aye.

23 The vote is five to zero; confirmation is
24 recommended to the Floor.

25 MR. COVITZ: Thank you, Mr. Chairman, Senators.

26 [Thereupon this portion of the
27 Senate Rules Committee hearing
28

1 was terminated at approximately
2 3:00 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of September, 1991.


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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SHARON KIMBERLY BELSHE, Deputy Secretary
Health and Welfare Agency

NAN J. DRAKE, Member
California Regional Water Quality Control Board
Los Angeles Region

MARK V. MACTAS, FSA, Vice President
TOWERS, PERRIN, FORSTER & CROSBY
PERS Actuary

SENATOR CECIL GREEN

ASSEMBLYMAN DAVE ELDER

WENDELL M. COON, Chief
Policy Development Department
Department of Personnel Administration

KAREN L. NEUWALD, Legislative Coordinator
Department of Personnel Administration

STEVE BAKER
Aaron Read and Associates
Representing Various Public Employee Groups

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Sharon Kimberly Belshe, Deputy Secretary, Health and Welfare Agency.

Ms. Belshe, we will ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position?

MS. BELSHE: Thank you, Mr. Chairman.

I appreciate the opportunity to spend a little bit of time with you this afternoon to discuss my qualifications to be Deputy Secretary for the Health and Welfare Agency.

I believe, in short, that my academic and professional training have helped me to develop the tools I need to serve Governor Wilson effectively in this position. My academic training has focused on public policy. I have an undergraduate degree in government from Harvard College and a Master's Degree in public policy with an emphasis in health and welfare issues from Princeton University.

More importantly, I've had the opportunity to work at the federal and state levels of government and to work with many of the issues for which the Health and Welfare Agency is responsible. I've had policy level responsibility as a legislative assistant to former Congressman Norm Shumway, who, up until 1990, represented California's 14th Congressional District, and most recently as a legislative assistant to then-Senator Pete Wilson.

1 As a legislative assistant to Pete Wilson, I was
2 responsible for health and aging issues, and had the opportunity
3 to work with him closely in the development and formulation of
4 policy and legislation in such areas as perinatal substance
5 abuse, medication management for the elderly, long-term health
6 care insurance, trauma care, prenatal, and access to health
7 care -- issues and priorities which the Governor has brought
8 with him to Sacramento.

9 I've also had the chance to work at the state level
10 of government, having served as a consultant to the Department
11 of Social Services on the GAIN Program, and having worked with
12 the Department of Health Services on California's statewide AIDS
13 education campaign.

14 These positions have given me considerable exposure
15 to and understanding of the institutions and processes of state
16 and federal government, and while the bulk of my experience has
17 been at the federal government, I'm confident that my knowledge
18 and understanding of the workings of the federal system are
19 important attributes which will pay dividends for our state.

20 Further, my experiences in the state and federal
21 government have really given me, I believe, a solid
22 understanding of the issues for which Health and Welfare Agency
23 is responsible. Our challenges in the Health and Welfare arena
24 -- AIDS, homelessness, welfare dependency, access to health care
25 -- are by no means unique, but they are certainly aggravated and
26 compounded by our state's size, geography and population.

27 What I offer is an awareness of and a sensitivity to
28

1 many of the challenges which our state faces in this area,
2 problems which I think we all recognize the state really can't
3 afford to ignore much longer.

4 Finally, I think I offer a good understanding of the
5 nature and the diversity of the people of our state who are
6 affected by the public policies which government promotes. As a
7 fourth generation Californian, I have deep roots in the state,
8 and while my work has taken me in recent years to Washington --
9 much to the chagrin of my mother, I would add -- I have worked
10 exclusively for California Members of Congress on California
11 issues affecting our state.

12 Given the nature and the diversity of the Health and
13 Welfare Agency and the departments for which it's responsible,
14 our Agency arguably, more than most, really has a direct daily
15 impact on the quality of lives of millions of Californians. I'm
16 confident that under the leadership of Governor Pete Wilson, and
17 Health and Welfare Agency Secretary Russ Gould, that our
18 Agency, working in partnership with the Legislature, can play an
19 important role in the quality of lives of our residents.

20 In the first eight months of the Wilson
21 administration, our Agency has worked with the Legislature and
22 begun to implement Governor Wilson's ambitious agenda in the
23 health and welfare arena. We have made very clear that even in
24 this time of unprecedented fiscal constraint, we need to focus
25 our policy orientation from one of remediation and reaction to
26 one of prevention and proaction. And through such gubernatorial
27 initiatives as those to improve access to health care, expand
28

1 treatment opportunities for substance abuse in pregnant women,
2 introduce work incentives in the AFDC program, reverse the trend
3 in teenage pregnancy, our Agency is moving forward to make
4 Governor Wilson's vision of a preventive form of government a
5 reality.

6 I'd say in closing that the Governor, since assuming
7 office, has laid the foundation from which our Agency can make a
8 meaningful and positive contribution to the quality of the lives
9 of our residents. I believe I'm well qualified to contribute to
10 this important effort, and I welcome the opportunity to do so.

11 CHAIRMAN ROBERTI: Thank you, Ms. Belshe.

12 Are there any questions? Senator Petris.

13 SENATOR PETRIS: I appreciate your emphasis on health
14 access. I think you're familiar with my views on it. I've
15 spent a lot of time on health care issues.

16 I'd like to ask you some questions about access,
17 beginning with long-term care. As I understand it, out of all
18 the health care policies that are out there in California today,
19 less than one percent provide any kind of long-term health care.

20 Do you have a program for expanding on that through
21 some kind of interaction with the insurance industry, or
22 legislation, or any program at all?

23 MS. BELSHE: As Senator Pete Wilson offered a
24 proposal in Washington that basically sought to promote broader
25 access to the quality of long-term -- private long-term care
26 insurance policies, basically providing access to federal
27 employees, while that proposal was an employee pay all, there's
28

1 a de facto contribution through that initiative by having the
2 government as a pooling mechanism.

3 I think the Governor is interested in exploring the
4 feasibility of applying that approach to the state -- to state
5 employees, but that's something that we have under consideration
6 and don't have a firm proposal.

7 SENATOR PETRIS: What about people who are not state
8 employees but are in the private sector?

9 MS. BELSHE: I think that's part of a broader
10 initiative in terms of taking a look at how -- what are the
11 various ways in which we can promote access to -- or, I should
12 say, promote the availability of quality and affordable private
13 long-term health care products.

14 As you know, the penetration, if you will, is
15 relatively nominal, but what we've seen among private employers
16 is a growing interest and willingness to provide that as a
17 benefit to employees. And what's rather remarkable is that the
18 average age -- it's my understanding that the average age of
19 employees who are interested in this product is roughly 40. So,
20 whereas one might presume that those people that would be most
21 interested would be older, we're finding that younger people
22 who, perhaps, are seeing the circumstances of their own parents,
23 are really the ones interested in purchasing such products.

24 SENATOR PETRIS: What about the working poor, the 6
25 million that are uninsured today? Eighty percent of them are
26 working, but because of the costs, the small employers for whom
27 they work just can't afford to carry.
28

1 Is there any plan that the Governor has in mind? I
2 guess my basic question is, is he in support of a notion of a
3 universal health care system, perhaps with a central payer that
4 will bring everybody else aboard and spread the cost around?

5 MS. BELSHE: Let me speak to -- you're raising two
6 issues: the broad issue of access to care, and then the
7 question of how to best approach that problem.

8 The problem of access to health insurance and medical
9 services is, and arguably, our most prominent health care
10 problem. And in our state, we have roughly 6 million
11 individuals who are uninsured, and that's simply not acceptable.

12 The Governor is certainly aware of and sensitive to
13 the nature of the problem and the fact that we need to move
14 forward in addressing it.

15 I think from our perspective, we would argue -- and
16 we recognize that it is a national problem, and arguably, it
17 requires a national solution. But in the near term, I think,
18 in all likelihood we are not going to see a national response to
19 the problem. This is something that the governors discussed at
20 great length in Seattle earlier, in early August, at the
21 National Governors Association, where health reform was the
22 major issue on the agenda. The governors recognized that in the
23 near term, at least, it's going to be incumbent upon the states
24 to act responsibly and exercise some leadership in this area.
25 And Governor Wilson recognized that.

26 He also recognizes that in order for states to work
27 creatively and come up with some meaningful approaches to this
28

1 problem, the federal government, at a minimum, needs to provide
2 a certain level of flexibility to the states in terms of how to
3 structure programs as well as how to finance them. And that's
4 something where he's exercised a lot of leadership in terms of
5 minimizing -- working to minimize the number of mandates on the
6 state, as well as encouraging the federal government to continue
7 to allow the states flexibility in financing many of their
8 indigent health care programs.

9 In terms of specific proposals, we are certainly
10 aware of and mindful of the bold and far-reaching proposal which
11 you have offered, SB 36. That initiative has made some
12 important contributions to the health care debate in terms of
13 promoting public awareness about the nature and extent of the
14 access to health care problem, and it's made an important
15 contribution to moving the issue on the public agenda. And we
16 acknowledge and applaud that.

17 While we are mindful of the advantages offered by the
18 single payer approach as characterized by its advocates, those
19 advantages, from our perspective, do need to be tempered by
20 possible disadvantages that could be associated with that
21 approach, as well as some of the questions that continue to
22 surround the single payer system, such as issues related to the
23 nature and the composition of the commission, the governmental
24 body that would serve to both establish prices as well as
25 purchase services; questions surrounding potential consumer
26 dissatisfaction with delays in access to services that possibly
27 would occur as a result of capping of health care expenditures;
28

1 questions surrounding possible disincentives that might be
2 introduced in terms of small businesses leaving the state,
3 perhaps chronically ill people entering the state.

4 But notwithstanding those issues that need to be
5 explored more fully, and we welcome the opportunity to engage in
6 that discussion, in the marketplace of ideas, the single payer
7 approach has a very important role to play, and we recognize
8 that. And I think most fundamentally, the administration is
9 certainly committed to working with the leadership in exploring
10 ways to promote the affordability and the availability of health
11 insurance, particularly for small businesses, which, as you
12 know, represent between 80-90 percent of those who are
13 uninsured, either as workers or dependents of workers.

14 We were encouraged by the attention that's been paid
15 in recent weeks to the issue of underwriting reforms. We don't
16 perceive that to be the panacea to the problem, but it's
17 certainly an important piece to the overall solution.

18 I think in the short-term, we would anticipate an
19 incremental approach to the problem that takes the best of our
20 current employer-based system and some of the ideas which you've
21 offered as well.

22 SENATOR PETRIS: I appreciate that.

23 I'm hoping that the Governor's attention will be even
24 greatly expanded in this direction, because I think we are in a
25 critical stage.

26 What is the need for the flexibility to be granted to
27 the state by the feds? Are there statutory or other
28

1 restrictions that would prevent a state as large as ours from
2 launching its own program?

3 MS. BELSHE: I think the best example of the
4 obstacle, Senator, that the federal government can impose or
5 represent, if you will, is what the State of Oregon is trying to
6 do in terms of modifying its Medicaid program. It's gotten a
7 lot of attention as a, quote-unquote, "ration of health care
8 services."

9 In order for the State of Oregon to move forward to
10 try something very different, they need an approval by the
11 federal Health Care Financing Administration to approve a
12 waiver, as it's referred to, to move forward with that proposal.

13 California, for example, as part of Governor Wilson's
14 package of preventative-related initiatives, was to make a --
15 promote greater access to managed care to the Medicaid program
16 recipients. In order for us to move forward aggressively in
17 that area, we will need a waiver from the federal government.

18 Often, unfortunately, administrative red tape and
19 bureaucracy delay the responsiveness of the federal government
20 responding to states' interest and willingness to try new
21 things. So, the Governor feels it's very, very important that
22 the federal government provide greater flexibility in terms of
23 allowing states to move forward.

24 SENATOR PETRIS: The only one I'm aware of is the
25 waiver required that you mentioned, if we try to get federal
26 funding folding into a state plan, like Medicare and MediCal.
27 MediCal is ours.
28

1 MS. BELSHE: Correct.

2 SENATOR PETRIS: What troubles me, and I hope that
3 the Governor will help us find a solution, I mean, even the AMA
4 has come forward and said, "Hey, this private insurance
5 mechanism is the wrong way to go. It's just not working, and
6 you need a central payer."

7 They claim -- I'm quoting now the New England Journal
8 of Medicine, which is, you know, the establishment, so to speak,
9 in medical providers. It says:

10 "If we adopted a single payer health
11 care system, similar to one that
12 Canada has, the savings would be --"
13 to the U.S.,

14 "-- would be between \$69-83 billion
15 in health expenditures every year."

16 And it goes on to explain how they arrived at this.

17 What troubles me under the present system, which I
18 think needs to really be attacked, is the mindset in the
19 private sector, which is inevitable. If I were in that
20 business, I'd be doing exactly the same thing that they're
21 doing, but I don't like what they're doing and I think they
22 don't belong in that business. The mindset is to exclude as
23 many claims as possible.

24 If you're in the health insurance business, and
25 people in this room want health coverage, and everybody
26 sitting on that side of the room has had a history of medical
27 problems, and people on this side have had no such history,
28

1 who gets the policy? The ones that are risk-free, relatively
2 speaking.

3 But then, even when the healthy ones get sick, they
4 immediately jump into the application and try to find reasons
5 for excluding that care. That's been the subject of studies
6 and severe criticism.

7 I have a statement here that says:

8 "Instead of finding ways to spread
9 the risk of health care equitably,
10 health insurers have established a
11 pattern of competing by avoiding
12 risk."

13 And there again, I'm not saying they're a bunch of evil
14 people who are doing evil things. The nature of the
15 mechanism in the marketplace apparently forces them to do it,
16 except for one thing. Their justification is that it's the
17 only way they can stay alive and make a reasonable profit;
18 otherwise, they have to close the doors because there're too
19 many claims.

20 But they're doing very well. The industry had a 90
21 percent increase in earnings last year, according to SIGNA.
22 And Blue Cross had a net profit of 788 million -- no, an
23 increase. Well, their increase was actually 658 percent last
24 year in their profits, which amounted to a \$788 million
25 increase.

26 That doesn't square with their justifications for
27 the necessity of rejecting people. We know of cases, Blue
28

1 Cross, where, on a very thin, thin line, they have rejected
2 the claim of a person who became seriously ill for one reason
3 or another having to do with the original application.

4 It seems to me it's imperative for us to get away
5 from a mechanism that emphasizes and encourages a limitation
6 of the people who are covered in the first place to those who
7 don't need it at the time they sign up, and exclusion of
8 those who file claims after they become eligible for a
9 claim. It's not the right way to go.

10 It's okay to be doing that for automobile drivers
11 and other kinds of risk, but for health care, it seems to me
12 that the stakes are too high for all of us and the general
13 public to jam us into a system that is constantly looking for
14 a way out as its primary goal, rather than a way in for all
15 of us.

16 That's why the single payer system is being pushed
17 by a lot of people, including myself, because it embraces
18 everybody. The medical history doesn't matter except as a
19 diagnostic tool for the treating physician. It's not used to
20 say, "Well, your grandfather had a heart attack and you
21 didn't tell us about it; therefore, we can't treat you for a
22 heart attack under this plan. We can't pay you for any heart
23 coverage." It's that bad in a lot of cases.

24 MS. BELSHE: I think, Senator, if I may, that's why
25 it's been encouraging to see that the one piece of the
26 problem, in terms of the underwriting reforms, has been
27 elevated on the political and public agenda.
28

1 I think the concerns which you articulate in terms
2 of some carriers acting in a manner that, rather than
3 managing risks or acting as efficiently and effectively as
4 possible, are staying in business by avoiding risk. And we
5 certainly recognize that there are some problems in the
6 industry, and through such underwriting reforms as guaranteed
7 issue and renewal, underwriting reforms in terms of
8 pre-existing conditions, rate bans, and so forth, that does
9 offer some promise.

10 SENATOR PETRIS: Can you explain more what the
11 underwriting reform consists of?

12 MS. BELSHE: Well, in terms of a guaranteed issue
13 and renewal, requiring carriers who operate in the State of
14 California in the small business health insurance market to
15 provide coverage to those who try to get it.

16 SENATOR PETRIS: They can't cancel?

17 MS. BELSHE: Exactly. That's in terms of the
18 guaranteed renewal. Those who currently have secured
19 coverage would be guaranteed renewal with certain rate
20 restrictions.

21 But there are some opportunities through these
22 types of reforms to promote the availability of health
23 insurance to small businesses, which, as you noted at the
24 outset in your remarks, is really -- should be our priority
25 population at this point in terms of looking at the extent of
26 the uninsured population and where they reside.

27 SENATOR PETRIS: And on long-term care, what's the
28

1 main thrust there, if any? I don't know if the Governor's
2 had a chance to look at that yet.

3 MS. BELSHE: Well, as I said, we're exploring the
4 possibility of pursuing an approach, which he offered in
5 Washington, here in the State of California.

6 But in terms of a broader approach, we certainly
7 recognize the private sector, private long-term insurance, is
8 not going to step in and fill the total gap, which is not
9 inconsiderable. It's another example of a problem that is
10 national in scope, and I think the states need to be working
11 closely with the federal government in developing some type
12 of a public-private sector approach that balances the public
13 role, which currently is considerable in terms of the role
14 that Medicaid plays in providing access to long-term care, as
15 well as the potential for the private long-term care
16 insurance market to step in and fill a broader part of the
17 gap.

18 SENATOR PETRIS: I'd like to turn to one other
19 subject, and that's the California Tumor Registry. That has
20 faced some very severe cuts, along with everything else. I
21 recognize that because of our budget crisis.

22 Can you tell me what projections you may have to
23 recommend to the Governor, hoping, I'm hoping that you're
24 going to fight very hard to get that Tumor Registry back up
25 to a normal operation so that it can continue to serve as the
26 only statewide source of information on all these cancer
27 tumors.
28

1 MS. BELSHE: As you're aware, the budget package
2 included a fairly significant chunk of money in terms of
3 unallocated budget cuts. And the impact of those cuts are
4 going to be traumatic, both in terms of their impact on the
5 state employees as well as on direct services to individuals.

6 What -- we're in a difficult situation. I mean,
7 our ability to protect any particular program, no matter how
8 important or no matter how high a priority, given the
9 magnitude of these cuts, is very limited. And quite frankly,
10 all programs are vulnerable. To suggest otherwise would be
11 misleading.

12 The thinking of our Department is, they have looked
13 to implement the roughly 20 percent cut imposed upon them in
14 terms of their state operations budgets. What's gutted their
15 thinking has been the imperative to protect direct delivery
16 of services to the public. And to account for that priority,
17 other programs have been proposed to be reduced
18 disproportionately. And that would be programs such as
19 technical assistance to the public, processing invoice
20 claims, things like that, and also data analysis, data
21 collection. And in that latter regard, a program like the
22 Cancer Registry is particularly vulnerable.

23 What I would emphasize, Senator, is that the
24 recommendations that the Department has made by no means
25 reflect a diminution of the importance of this program, and
26 the importance of monitoring the exposure as a result of --
27 excuse me, the exposure to environmental health hazards. But
28

1 we are in a very difficult position right now, and we're
2 trying to balance competing priorities.

3 What the Department has sought to do is to come
4 forward with a proposal that reflects the need to protect,
5 first and foremost, the direct services to individuals, and
6 also to maintain core programs, so that if a program does
7 need to be brought down given these unprecedented fiscal
8 challenges which we now face, that we will maintain a
9 sufficient infrastructure, if you will, so that in future
10 years, when funding does become available, we can build back
11 up and expand if possible.

12 But I'm being candid with you when I articulate the
13 difficult position in which our departments find themselves.
14 The magnitudes of the cuts, which were part of the budget
15 package, in the area of state operations are considerable.
16 We are in a position of trying to strike that balance, if you
17 will, between competing priorities.

18 SENATOR PETRIS: Are there any predictions on a
19 turnaround, or is that based on the economy?

20 MS. BELSHE: I would argue that -- submit that it
21 is based upon the economy, and the latest news is not all
22 that terribly positive.

23 SENATOR PETRIS: The President says it's over; the
24 recession's over.

25 MS. BELSHE: I would certainly defer to the
26 President.

27 But in terms --
28

1 SENATOR PETRIS: Can we turn off the mikes and ask
2 that question again?

3 [Laughter.]

4 MS. BELSHE: Certainly, our expectation is that the
5 economy will turn around, and we will find ourselves in a
6 position in December when we're looking forward to the next
7 budget cycle, where we can --

8 SENATOR PETRIS: That's what I'm really asking. Do
9 your people feel that next year will be better, and we're
10 going to be coming out of it?

11 MS. BELSHE: It is our hope and expectation, but
12 certainly, it does not look terribly optimistic at this
13 point.

14 SENATOR PETRIS: I'm looking at 50,000 deaths from
15 cancer for this year. And the cost of this program is 25
16 cents per taxpayer per year.

17 You know the story. It's a tremendous asset, the
18 best of its kind in the nation. We started it in 1985, and
19 it's so good that it attracts a lot of additional money
20 coming in from out of state. As you know, tens of millions
21 of dollars more are poured in from other sources. The more
22 we cut back, the more others will turn away from it and send
23 their money elsewhere.

24 I just hope that can be -- I know everywhere you
25 go, you're being told that about all the various aspects of
26 our health services, and they all need a high priority. But
27 in view of the devastation that cancer is causing among our
28

1 people, I would hope this would have a high priority so we
2 can restore as much of the money as possible as soon as
3 possible.

4 There again, we have to wait the shaky rumblings of
5 the economy.

6 MS. BELSHE: Well, again, Senator, just to
7 re-emphasize, we have been very mindful of the importance of
8 many of these programs, which are going to suffer as a result
9 of the cut in state operations. But we have also been
10 mindful of the importance of many of these programs, and the
11 critical need to maintain the core program, the fundamental
12 infrastructure, so that when the economy turns around, if
13 additional resources do become available, we can build upon
14 that infrastructure.

15 SENATOR PETRIS: Thank you.

16 CHAIRMAN ROBERTI: Are there any other questions?
17 Is there any opposition in the audience? Do I hear a
18 motion?

19 SENATOR CRAVEN: Move Ms. Belshe.

20 CHAIRMAN ROBERTI: Senator Craven moves
21 confirmation be recommended to the Floor.

22 Secretary will call the roll.

23 SECRETARY WEBB: Senator Beverly.

24 SENATOR BEVERLY: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote is five to zero; confirmation is
7 recommended to the Floor.

8 MS. BELSHE: Thank you, Senators.

9 CHAIRMAN ROBERTI: We look forward to working with
10 you.

11 The next appointment is the appointment of Nan
12 Drake, Member of the California Regional Water Quality
13 Control Board.

14 Ms. Drake has had the delightful experience of
15 appearing before us before, and we've heard much about your
16 qualifications, which actually, on the last appointment,
17 revolved around your activities on this Board.

18 Maybe you could refresh us as to why you're
19 qualified to resume this position.

20 Senator Torres would like to appear because he
21 indicated to me he is in opposition, or he would like to ask
22 some questions in opposition.

23 Ms. Drake.

24 MS. DRAKE: I did speak to Senator Torres earlier
25 today, and I think that I have answered his concerns. And he
26 has allowed that he will not be appearing, at least that is
27 what he said to me. I took care of his questions and
28

1 concerns.

2 CHAIRMAN ROBERTI: She indicated Senator Torres
3 said he is not going to appear. That's fine.

4 I frankly don't think we have to go through any
5 detailed resumption. It was not that long ago.

6 SENATOR BEVERLY: It was a legal point last time on
7 whether she fit the qualifications.

8 CHAIRMAN ROBERTI: That's right. There was some
9 opposition based on voting, but it was essentially a legal
10 point on qualifications.

11 MS. DRAKE: That's correct.

12 CHAIRMAN ROBERTI: So, do I hear a motion?

13 SENATOR CRAVEN: Move.

14 CHAIRMAN ROBERTI: Senator Craven moves
15 confirmation be recommended to the Floor, that we recommend
16 confirmation of Ms. Drake to the Floor.

17 SENATOR MELLO: I'm sorry, I did have a couple
18 questions or two.

19 CHAIRMAN ROBERTI: Fine, I sorry. Please ask. The
20 motion's still before us.

21 SENATOR MELLO: That's fine. I apologize.

22 Going back to your last hearing when you were
23 appointed to that environmental position, and I guess you
24 withdrew or the Governor withdrew your name right at the end
25 there.

26 In going back over the record, it appears at least
27 one case where you voted to approve expansion of the Azusa
28

1 landfill, and the State Board overrode your decision and
2 required more protection for the San Gabriel aquifer. Then
3 the court comes along and ruled even that wasn't good enough.

4 CHAIRMAN ROBERTI: Senator Craven, can you assume
5 the Chair. I'll be right back.

6 SENATOR MELLO: So, it just appears from that
7 series of actions, from your support to the State Board to
8 the court, the impression I get is you're going to be very
9 lax in trying to enforce what appears to be good, prudent
10 protection of our landfill sites.

11 Can you elaborate on that?

12 MS. DRAKE: Yes, Senator Mello.

13 I am a public member sitting on the Water Quality
14 Board. I have sat on the Water Quality Board since 1988.

15 At the time that the Azusa landfill vote came
16 before that Board, it was my second meeting. When I heard
17 all of the testimony concerning the Azusa landfill, which was
18 the only time that I heard testimony, there was one speaker,
19 and that was the Water Master from San Gabriel Valley. There
20 was no public opposition at that meeting. And the Board
21 staff of the Regional Water Quality Board recommended the
22 approval for this.

23 A lot of time has passed. More information has
24 come forward, and I had attended the last Regional State
25 Board meeting when they did rescind the order. And
26 certainly, most certainly, my vote would have changed on
27 that.
28

1 SENATOR MELLO: So, you're indicating now that
2 perhaps you would have voted differently had you --

3 MS. DRAKE: I was a two-month Board member, again,
4 and it was recommended by staff and also at that time there
5 was no great opposition. The opposition seemed to build at a
6 later time.

7 And as you know in making decisions, it's really up
8 to what you hear and what you've read.

9 At that time I did not have all the information
10 that I now have. And yes, you're exactly right, I would
11 change my vote.

12 SENATOR MELLO: I think your record shows that you
13 were on the city council, you served on the city council for
14 a period of time.

15 MS. DRAKE: Correct.

16 SENATOR MELLO: I served in the county supervisors.
17 I can say that your decisions are more than what you hear and
18 more what you read, because on those local issues, what I
19 used to do on planning and land use issues, matters before
20 the board, I would go out and physically look at them.
21 Because the staff reports come in, they are staff reports,
22 and many times they represent a position of the staff, biased
23 or not biased, whatever it is.

24 My vote is counted against me. I want to make sure
25 I'm doing the right thing, I understand.

26 So then, on that basis, the State Board must have
27 gone out and had better information than you had because they
28

1 went --

2 MS. DRAKE: I think it was a continual search for
3 information and all the Boards working together, along with
4 all of the opposition. I think it was really everybody
5 moving forward to a resolution that brought this forward.

6 But perhaps, Senator --

7 SENATOR MELLO: You're not letting me ask my
8 question, Mr. Chairman. That's okay. If you want to take
9 that course, that sort of puts me in a negative position.

10 Your response of moving forward, I think, when the
11 State Board overrode your position, I think that's more.
12 That's reversing your position rather than just moving
13 forward.

14 MS. DRAKE: But it would not reverse my position
15 today, because as I said --

16 SENATOR MELLO: That sounds like Clarence Thomas.
17 I once saw him on t.v., and he was talking about what he did
18 and how he would change that today.

19 But I think -- I don't know what you're going to do
20 tomorrow. All I can judge you is what you've done on your
21 record on this case here.

22 Now, I understand this Azusa site had over 100
23 acres piled high with trash, besides a gravel pit with direct
24 access to the aquifer of the San Gabriel Basin, major source
25 of municipal water supply. The owners of the landfill
26 applied in 1988 for a water discharge permit to allow them to
27 fill the remainder of the site. Complicated response
28

1 included, you know, the steps that were taken.

2 That's one issue that it appears that you've opted
3 not on the side of trying to protect the sites and also the
4 water aquifers, but apparently, from your lack of really
5 getting more acquainted with the issue, because the Regional
6 Boards have a lot of important issues that --

7 MS. DRAKE: Correct.

8 SENATOR MELLO: -- come before them. Unless you
9 really get out and see the issues, you're going to be based
10 on what reading and what staff is going to tell you.

11 And I tell you myself, as a public servant, I'm not
12 going to rely on staff and what I read to make my decisions
13 because I'd be out of office darn quick.

14 What do you expect the Board to do over the next
15 few years to require localities to clean up the storm water?

16 MS. DRAKE: The storm water policy is just now
17 being put into place. There was been an agreement between
18 the City of L.A., one of the cities in Ventura County, and
19 they are working toward compliance with the new EPA standards
20 for storm drains.

21 SENATOR MELLO: Let me ask, has Senator Torres been
22 called?

23 MS. DRAKE: I spoke to Senator Torres earlier
24 today.

25 SENATOR MELLO: Please, do you mind if I ask the
26 question to the Sergeant?

27 Is he coming in or not?
28

1 SERGEANT-AT-ARMS BRISTOW: No.

2 SENATOR MELLO: He's not coming, okay.

3 Thank you, Mr. Chairman.

4 SENATOR CRAVEN: Fine.

5 Senator Mello, there's no need to quit if you have
6 something else.

7 SENATOR MELLO: Well, no, that's -- I was asking
8 her questions. I remember from her other record, I don't
9 mind saying it, I can't support her position today because I
10 think she doesn't represent the kind of qualification or
11 philosophy that we need on the Regional Water Quality Control
12 Boards.

13 Most of these go on the consent calendar. We
14 hardly ever take one and put it for a discussion, but your
15 past service, I think, is controversial, and we have a
16 tremendous problem statewide of water quality, and we have to
17 have people in there that are going to be working towards
18 cleaning up the environment.

19 SENATOR CRAVEN: Very well. Your prerogative.

20 SENATOR BEVERLY: Move approval of the nomination.

21 SENATOR CRAVEN: Is there anyone in the audience
22 who wishes to testify either pro or con? There appears to be
23 none.

24 Any other questions?

25 Very well, Senator Beverly has moved. Call the
26 roll, please.

27 SECRETARY WEBB: Senator Beverly.
28

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: No.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Senator Roberti.

9 SENATOR CRAVEN: Let's hold the roll on that.

10 Actually it's out, Ms. Drake, but I'd like to get
11 Senator Roberti on the roll, if I may. You're all set.

12 MS. DRAKE: Thank you.

13 SENATOR CRAVEN: Next we have Towers, Perrin,
14 Forster and Crosby, PERS Actuary.

15 Almost sounds like sort of a folk group.

16 MR. MACTAS: Mark Mactas, Vice President and
17 Principal of Towers, Perrin Forster and Crosby.

18 Happy to reiterate some of the qualifications of
19 our organization that we talked about last week, if that's
20 your wish.

21 SENATOR CRAVEN: Fine, whatever you choose.

22 MR. MACTAS: As I said, I'm a Vice President and
23 Principal of our firm. I will be the principal actuary on
24 the PERS engagement, and I did want to make some brief
25 remarks about our firm's resources, the local expertise in
26 California that we bring to the engagement, our commitment to
27 providing services of the highest quality, and a bit about
28

1 our quality assurance program.

2 TPF&C is an organization, it's a large one for a
3 consulting firm. We have over 60 offices around the world
4 and employ some 700-800 actuaries around the world. We're an
5 employee-owned firm, and we enjoy the largest market share of
6 the Fortune 1000 companies as well as a substantial practice
7 in the public sector. Size doesn't mean anything in and of
8 itself, but we've established a number of mechanisms to bring
9 our expertise and experience from around our firm to bear on
10 individual client problems.

11 As far as our local expertise is concerned, among
12 our local public sector clients are: the University of
13 California, Department of Personnel Administration, Los
14 Angeles County, the City of Sacramento, the State Teachers
15 Retirement System, the Los Angeles Department of Water and
16 Power, Orange County, the City and County of San Francisco.

17 SENATOR CRAVEN: May I interrupt you at this
18 juncture.

19 This information which he is recounting for us was
20 discussed at the last meeting, and I think you will all
21 recall that.

22 I'm wondering if the Members of the Committee may
23 have some specifics in the form of questions that they could
24 direct to this gentleman and let him proceed on that basis,
25 which I think will bring us to a better and closer
26 conclusion.

27 MR. MACTAS: That's fine.
28

1 SENATOR CRAVEN: Senator Petris, do you have any
2 questions?

3 SENATOR PETRIS: Yes, but I can't find them.

4 SENATOR CRAVEN: Well, then maybe Senator Mello may
5 have some.

6 SENATOR MELLO: I've gotten a series of letters
7 during the last time you were here -- was it last week --
8 from employee groups that feel that, from your own
9 experience, you're, in their opinion -- they're raising
10 questions about your qualifications really to handle this
11 job.

12 MR. MACTAS: I'm sorry, I didn't hear.

13 SENATOR MELLO: I say, they're raising questions in
14 opposition to your being appointed because of your firm's
15 lack of experience in managing this type of activity.

16 SENATOR CRAVEN: Would these be some of the people
17 that testified last time?

18 SENATOR MELLO: May I ask Nancy, do you have copies
19 of those letters in opposition that came in?

20 MS. MICHEL: They're in your folder, yes.

21 SENATOR MELLO: Help me find them here.

22 MS. MICHEL: They should be listed on your summary,
23 which is the blue one.

24 SENATOR MELLO: Here we go.

25 Opposed to your appointment are: the Public
26 Employee Coalition, made up of Andy Baron (AFSCME), Robert
27 Katz from ACSA, Andrew Legg from CAHP, Alan Hardy from CAPS,
28

1 Ron Bywater from CDFEA, Robert Gurian from CFA. It goes on
2 and on: Dean Tipps, SEIU; Yolanda Solari, CSEA. It says:

3 "On behalf of the more than one
4 half million public employees
5 represented by the various groups
6 which comprise the Public Employee
7 Coalition, we would like to express
8 some serious concerns we have with
9 the Governor's appointment of
10 Towers, Perrin, Forster and Crosby
11 as the actuary for PERS. We regret
12 that we have not expressed these
13 concerns earlier, however, we only
14 became aware of the problems during
15 the first round of questioning by
16 your committee."

17 In addition, SEIU from the AFL-CIO makes the same statement
18 in opposition. The California Union of Safety Employees,
19 Dean Rewerts, representing the Safety Employees, 5500
20 employees; the California Firefighters, Dan Terry, President,
21 urging not to confirm the Governor's recent appointment. And
22 the California School Employees Association, that's CSEA.

23 Here's a whole group of people who represent
24 probably 600-700,000 people. Have you been given copies of
25 their letters?

26 MR. MACTAS: I believe I'm aware of the document
27 that you're referring to. I think it lists four specific
28

1 concerns.

2 Am I referring to the right document?

3 SENATOR MELLO: I just went through the summary
4 there, but they do have all of these letters here.

5 SENATOR CRAVEN: You know, Senator Roberti is
6 chairing.

7 Senator Roberti, just as a matter of information,
8 we have a three-one vote on Drake, but I wanted to halt to
9 get you on the roll.

10 CHAIRMAN ROBERTI: I move the call be lifted.

11 SENATOR CRAVEN: Lift the call.

12 SECRETARY WEBB: Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 SECRETARY WEBB: The vote is four to one.

15 CHAIRMAN ROBERTI: The vote is four to one for
16 confirmation. Ms. Drake is recommended for confirmation.

17 SENATOR CRAVEN: Henry, some of those people, I
18 think, testified last week; did they not?

19 SENATOR MELLO: Pardon?

20 SENATOR CRAVEN: Some of those people testified
21 last week, came in and --

22 SENATOR MELLO: Some did, but I know it's kind of
23 unfair to hand you all this now, but I think in all fairness
24 it'd be good if -- could he be given a copy of this?

25 MR. MACTAS: I anxious to belay any concerns that
26 people have, Senator.

27 SENATOR CRAVEN: My point is, I think it's fine if
28

1 they choose to come up with an objection, but I don't know
2 that it necessarily is an objection. I think it's more of a
3 suspicion, and perhaps a fright, based on what I would be so
4 bold as to say a lack of information. Most of the people who
5 are objecting, as least as I interpret those letters, would
6 be people who are expert in a field other than that which is
7 under consideration. I don't know that they're necessarily
8 expressing a real valued judgment in this issue.

9 If they're here to testify, I think it'd be fine to
10 hear them, certainly, but I just don't quite understand what
11 their problem really is.

12 CHAIRMAN ROBERTI: I think Ms. Michel would like to
13 address the quality of the letters.

14 MS. MICHEL: What we've done is tried to address
15 some of the questions that were brought to us. And we put
16 those to Leg. Counsel and then in a letter to the
17 administration with a number of questions.

18 You have those questions in front of you that we
19 addressed yesterday. It was very late, and they were trying
20 to respond to us, so perhaps --

21 SENATOR CRAVEN: Do they follow the blue sheets?

22 MS. MICHEL: No, sir. They are laying in front of
23 you separately. We have a letter to the Governor trying to
24 address the questions that have been brought to us by the
25 various public employee organizations.

26 SENATOR MELLO: If I may just continue, Mr.
27 Chairman.
28

1 The thing that I think they're concerned about,
2 going back to our budget session, I was surprised myself that
3 the Governor insisted on this actuary situation where he can
4 name his own actuary subject to our confirmation.

5 I'm coming under the old premise of: if it's not
6 broke, why fix it. So, I looked at what the previous
7 actuaries were performing, and I came to the conclusion
8 they've done an excellent job of managing the resources for
9 the PERS Board, and because of their earnings and the way
10 they've carried out their duties.

11 And I think the suspicion, I'm asking myself that,
12 and I think that's confirmed by the employees, is that only
13 that the Governor wanted a change, and I said why did he want
14 to change? I think the Governor's looking for somebody
15 that's going to be more responsive to what he's looking for
16 and perhaps allow the same -- I want to use the right word --
17 what we did to the transferring of those funds into the
18 general fund. But I think, from his position, I think that
19 money belongs to the employees and the Retirement Board.

20 I think what the Governor's looking for, and I'm
21 really skeptical myself, is that he's looking for an actuary
22 that is going to tilt towards us not putting the bucks up,
23 and therefore, the employees are concerned there won't be
24 enough money there just to carry out the retirement
25 expectations that they have. That's, I think, the reason why
26 these people who signed representing, let's say, over half a
27 million employees, are really concerned.

1 I'd like to know from your point of view how you
2 respond to that allegation.

3 MR. MACTAS: I guess a lot of that centers around
4 the passage of AB 702 to begin with, but given that that's in
5 place, I'd like to share with you some of my thoughts on some
6 of the issues that are very important to this engagement
7 which you raise.

8 It's clear under law, it's been clear in the RFP,
9 it's been clear all along that we are fiduciaries as part of
10 this engagement to the plan membership. That's a very
11 important responsibility. We take it very seriously, and we
12 will not do anything to compromise our responsibility in that
13 regard.

14 That's a heavy responsibility, and nothing will get
15 us to waver from that.

16 And I may also add that it's the same
17 responsibility on us that it had been on the PERS Board. So,
18 it's a very serious responsibility and one we take very
19 seriously ourselves.

20 SENATOR MELLO: But on the other hand, it's easy to
21 say we're not going to renege on our fiduciary
22 responsibility.

23 I was shocked last year when I looked at the Big
24 Eight, the accounting firms, paid out -- their insurers paid
25 out \$400-500 million in malpractice and liability cases that
26 were charged against these Big Eight firms for falsely -- I
27 guess that's the proper word -- coming up with an accountancy
28

1 that investors relied on and they found to be untrue. And
2 you just wonder how these companies with the big national
3 name -- look at Solomon Brothers this last week; look what
4 happened there. Look what happened to all these big
5 investment companies. I mean, who in the heck can you trust
6 anymore?

7 I'm not saying I mistrust you, but I'm just posing
8 a situation. I think it's easy to be consistent with your
9 fiduciary responsibility and make judgments that err -- that
10 tilt to one side or the other and still feel that you've been
11 true to your responsibility.

12 MR. MACTAS: As I say, we -- we have a very strong
13 commitment to this engagement. We understand that it's very
14 important for California. It's likewise very important for
15 our firm.

16 We're very proud of the reputation for high quality
17 service we've earned, and we have every intention of doing
18 everything to maintain it.

19 SENATOR MELLO: Let me ask you the question a
20 different way, then.

21 Do you think it was proper for the state to
22 transfer funds that were to be paid into the PERS Board into
23 the general fund and not pay that, as we did this last year?

24 MR. MACTAS: I always hesitate to get into a legal
25 area. I'm not a lawyer. I think there is a matter before
26 the courts, and the courts will decide on the validity of
27 that action.
28

1 SENATOR MELLO: Your own opinion.

2 MR. MACTAS: My understanding is that the funds
3 weren't transferred to the general fund, but they'll reside
4 in a trust and will be used to offset future contributions.
5 So, my understanding is that they still reside in trust and
6 have not been transferred to the general fund.

7 SENATOR MELLO: But they have been taken away from
8 the allowable use of the retirees for their potential growth
9 and --

10 MR. MACTAS: My understanding is that the funds are
11 all there in trust for the members of the system. I think
12 their use has been altered from -- as a result of the
13 IDDA/EPDA change that took place as part of AB 702.

14 But it's my understanding that they're still in
15 trust for the membership.

16 SENATOR MELLO: They're in trust, I think, pending
17 a court case. But I think the goal of the administration is
18 to ultimately be able to use those funds and have an effect
19 on the state's contribution to the retirement fund.

20 I would look at it a little bit differently. I
21 think rather than be tapping this fund, as we have a few
22 times, and even under Governor Jerry Brown, and the courts
23 ruled against the state in that case, and I don't know what
24 they're going to do this time, but we ought to change the
25 formula. But whatever we make a deal on, that money ought to
26 go in there for the use of retirees.

27 I'm just trying to figure out whether or not you're
28

1 gong to be beholden to the administration and come up with
2 decisions that are going to allow us to take money away from
3 the retirement fund, or, if you're going to go in there and
4 go and do what's right based on the current law and let that
5 money accrue for its rightful purpose. Or, we ought to just
6 change the law and say, you know, our contribution is too
7 high, let's reduce it. If that's what we do, then we live by
8 what our action is.

9 MR. MACTAS: We will do everything to abide by law.
10 That's clear.

11 We will look at the benefit promises that have been
12 made to members, assess what the liabilities with respect to
13 those benefit promises are, take into account all the assets
14 that have been accumulated thus far, and make a determination
15 to the best of our ability of the necessary funding that
16 needs to take place to adequately secure those benefits,
17 given our fiduciary responsibilities to members.

18 And we will not waver from that commitment.

19 SENATOR MELLO: Can you just explain to me briefly
20 what you feel the fiduciary responsibility is in a lay sense?

21 MR. MACTAS: That to me is direction on who my
22 client is. We have to do what needs to be done in order to
23 ensure that there are funds that adequately secure the
24 benefit promises that have been made to people. That's how
25 we've come into this engagement. That's what we've said we'd
26 do, and that's what we intend to do.

27 SENATOR MELLO: In this case, who is your client?
28

1 MR. MACTAS: The members of the system.

2 SENATOR MELLO: Is your client?

3 MR. MACTAS: Correct.

4 SENATOR MELLO: Do you get paid out of the PERS
5 Board, or do you get paid -- I mean out of the PERS fund?

6 MR. MACTAS: Out of the fund.

7 SENATOR MELLO: I wish some other Members were
8 here. This is not my field, this whole thing of retirement.

9 MS. MICHEL: Senator Cecil Green did want to be
10 here.

11 SENATOR MELLO: His staff is here.

12 Is Cecil coming?

13 CHAIRMAN ROBERTI: He was here. I hear his voice.

14 MS. MICHEL: There he is.

15 SENATOR MELLO: Mr. Chairman, I will now stop my
16 line of questioning, which was more in lay terms, and yield
17 to the Chairman, who can call on another Member.

18 CHAIRMAN ROBERTI: Yes, Senator.

19 We've been joined by Senator Cecil Green, the
20 Chairman of Public Employees and Retirement Committee.

21 Are there any other questions?

22 Senator Green, do you have any questions you'd like
23 to ask?

24 SENATOR C. GREEN: Well, I'm sorry and apologize
25 for being late. I was discussing a bill on the Floor.

26 I don't know what the questions have been at this
27 point, but one of the questions that I have is, one of my
28

1 priorities for next year with the PERS Committee will be to
2 putting in a new Tier Three.

3 What will your actuary be doing on that? For
4 instance, we'll have many requests for background information
5 and so forth.

6 MR. MACTAS: This came up also in the Assembly
7 hearing, and the terms of the RFP and, indeed, our proposal
8 response is in the form of -- there are four tasks; three of
9 which are well-defined, and the fourth one has to do with ad
10 hoc studies as requested.

11 If we are requested to study a third tier, we're
12 happy to do so and offer our advice and counsel in that
13 regard, but it was not one of the specified tasks in the
14 Request for Proposal, and we didn't respond to it directly in
15 our response.

16 SENATOR C. GREEN: In other words, you will be
17 responding to those requests, but there will be a fee
18 involved in those requests?

19 MR. MACTAS: Yes.

20 SENATOR C. GREEN: Then, I guess the question of
21 the Rules Committee is, because of these type of things
22 coming up, this will be legislation for those employees and
23 put in place, something of benefit to our employees, then how
24 do these committees, then, pay those fees? I think that's
25 something we have to look at.

26 CHAIRMAN ROBERTI: Do you have an answer to that or
27 any observation?
28

1 MR. MACTAS: My understanding is that the types of
2 studies that are requested as part of this Task Three, as
3 it's referred to in the RFP, are the kinds of things that
4 have come along in the past, and the actuary has responded to
5 in the past.

6 We certainly intend to continue the same type of
7 responsiveness and service to people who need it.

8 My understanding is that those funds come from the
9 trust fund itself, because they have to do with the system
10 itself.

11 I'm hope I'm not speaking out of school on that.

12 SENATOR C. GREEN: I guess being the difference of
13 the system, they had their own employees hired to come up
14 with those figures and to do the actuaries.

15 Now in this case, we don't have our own employees
16 hired, and we can't respond to those legislative needs as
17 legislation progresses through these houses.

18 MR. MACTAS: We understood going into this that
19 there are some 200 bills that needed analysis by the
20 actuaries annually, and we certainly contemplate forming that
21 function. So, access to our staff to do that kind of work is
22 a commitment on our part. We fully intend to do that.

23 SENATOR C. GREEN: Access to your staff with a
24 cost.

25 MR. MACTAS: Yes.

26 SENATOR C. GREEN: Thank you.

27 I guess the other question I have is, you wrote a
28

1 letter to the actuary, and there were many questions in that.
2 Have those been answered?

3 CHAIRMAN ROBERTI: A number of them have. I,
4 unfortunately, was out for part of the hearing.

5 MS. MICHEL: We have nothing in writing.
6 The questions from last week?

7 SENATOR C. GREEN: No, this was the September 10th
8 letter.

9 MS. MICHEL: No, we have no written response to
10 those questions. So, if you wanted to go down that list of
11 questions and see if there is --

12 SENATOR C. GREEN: I think all of those are very
13 important.

14 MS. MICHEL: I think there are also representatives
15 of DPA here if you have questions of them.

16 SENATOR C. GREEN: Some of them are DPA's also.

17 MS. MICHEL: Then you may want to ask somebody else
18 to come forward.

19 CHAIRMAN ROBERTI: I take it you're the
20 representatives from DPA? Why don't you assume the seat
21 there.

22 Will the Sergeant add two chairs at the witness
23 stand?

24 SENATOR BEVERLY: While they're getting situated,
25 what is the status in the Assembly?

26 SENATOR C. GREEN: Mr. Elder is here.

27 CHAIRMAN ROBERTI: Assemblyman Elder, you told me
28

1 but I forgot. What is the status in the Assembly?

2 ASSEMBLYMAN ELDER: Mr. Chairman and Members, the
3 Assembly Committee recommended that the full Assembly concur
4 or approve the contract. That motion passed out of the
5 Committee, so it'll be reported to the Floor.

6 SENATOR BEVERLY: Your committee or the Rules
7 Committee?

8 ASSEMBLYMAN ELDER: No.

9 SENATOR BEVERLY: Which committee?

10 ASSEMBLYMAN ELDER: It was already heard in my
11 committee and it's gone to the Floor.

12 CHAIRMAN ROBERTI: They hear it in the subject
13 matter committee.

14 ASSEMBLYMAN ELDER: It's gone to the Floor, and if
15 the Speaker decides to take it up, it will be voted on before
16 we adjourn. If not, then it will be in January.

17 CHAIRMAN ROBERTI: Thank you, Assemblyman.

18 Senator Green.

19 SENATOR C. GREEN: I think you all have copies of
20 that. Question number one is the type of safeguards on the
21 confidentiality of PERS records and information necessary to
22 perform the required actuarial functions?

23 Do you have in place an opportunity to hold those
24 records in confidentiality?

25 MR. MACTAS: Yes, we certainly do. And this is --
26 the confidentiality of client information is something that
27 we deal with everyday, and we have full safeguards and
28

1 respect the full confidentiality of PERS records in that
2 regard.

3 SENATOR C. GREEN: Then number two:

4 "Does the existing staff of the
5 Governor have any individuals --"
6 and this, I guess, would be DPA,

7 "-- that would have actuarial
8 expertise necessary to administer
9 this contract on a day-to-day
10 basis?"

11 CHAIRMAN ROBERTI: Please identify yourself.

12 MR. COON: Senator Roberti, Members of the
13 Committee, my name is Wendell Coon from the Department of
14 Personnel Administration.

15 In regard to question number two, the direct answer
16 is no. The Governor's Office does not have actuarial
17 expertise in the office.

18 In answer to this question, though, I would like to
19 refer the Committee to a letter that the Governor sent to
20 Senator Roberti that indicated the cooperation level between
21 the Governor's Office and PERS during the process has been
22 very good and a key to continued success and the completion
23 of the process to move the actuarial responsibility to the
24 contract firm.

25 CHAIRMAN ROBERTI: Do you have a copy of that
26 letter? That's dated September 10th, to me from Governor
27 Wilson.
28

1 MR. COON: And I guess the bottom line in all of
2 this is, we see no need to re-invent the wheel and try to
3 duplicate all of the processes and disrupt the processes that
4 are now in place and understood by the participants.

5 We are in the process of reviewing that. As you
6 can understand, all of us have been really under a very tight
7 timetable and the gun to get this going. We are working with
8 them to develop these systems and, you know, the systems will
9 be in place pretty soon.

10 SENATOR C. GREEN: I guess the big thrust of the
11 question is the administration of the contract on a
12 day-to-day basis.

13 Do you have or will you be putting in place someone
14 in the Governor's Office responsible for that? Because the
15 responsibility has come off of PERS and it is now in the
16 Governor's Office.

17 MR. COON: Yes.

18 My understanding is that that would be Dave Caffrey
19 in the Governor's Office. He'll be named specifically as the
20 contract manager.

21 SENATOR C. GREEN: In other words, he will be the
22 contract manager?

23 MR. COON: Yes.

24 SENATOR C. GREEN: Very good.

25 Three goes on the criteria to use to determine if a
26 request of a local employer or employee organization for
27 evaluation is not acceptable?
28

1 MR. COON: I think this gets to a question of
2 access to the system, and how do -- how does the process
3 accommodate requests from local government employees,
4 employee organizations, the Legislature, the administration.

5 There is a process in PERS now in place through
6 which this work is processed: it's reviewed, decisions are
7 made about the priorities of it, cost determinations are made
8 based on PERS Board policy on what the charges would be for
9 all of that.

10 Again, our interest is in not fixing things that
11 ain't broke. We plan to review that process and see
12 basically, you know, what's going on, and use as much of the
13 system as we can.

14 I think the bottom line in all of this, however, is
15 that the process, the firm that would be in place now, would
16 have the resources generally to accommodate the kind of
17 requests that have been made in the past, and we would not
18 anticipate a problem, you know, that's really different than
19 the current system in responding to these requests.

20 SENATOR C. GREEN: So, the local employer's request
21 would be honored as it is currently with the PERS Board?

22 MR. COON: We need to look at those systems, but
23 that really is our process. Our inclination is business as
24 usual.

25 SENATOR C. GREEN: Number four:

26 "How would possible conflicts of
27 interest be resolved, if, for
28

1 instance, the proposed benefit
2 increase is the subject of
3 collective bargaining negotiations?"

4 That's probably a key thing as far as this whole
5 matter of an outside actuary, because you do get into
6 collective bargaining.

7 MR. MACTAS: Sure.

8 I hope I understand the question correctly, but the
9 extent that something comes up in bargaining that needs to be
10 costed or analyzed from an actuarial standpoint, I think it's
11 closely aligned with the earlier process that Wendell was
12 alluding to, and that is, to the extent that requests come to
13 us, we're happy to price those various alternatives and,
14 again, perform the process in a fashion similar to what it's
15 been in the past.

16 SENATOR C. GREEN: But if you do have a conflict of
17 interest develop, which does happen from time to time, with
18 PERS and the administration, then how do you resolve those?
19 What type of mechanism are you going to be putting in place
20 to resolve those conflicts of interest?

21 MR. MACTAS: I guess I have a hard -- I'm having
22 difficulty seeing the conflict of interest.

23 Our charge will be to price a benefit change, and,
24 you know, the price based on the assumptions that we set will
25 be the price. I don't see where there's a potential for a
26 conflict there. If somebody's asking for what's the
27 actuarial impact of this proposed benefit change, we will do
28

1 that on the assumptions and methods that have already been
2 employed.

3 We're not in the position, as part of this
4 engagement, to pass judgment on whether or not that benefit
5 increase should be adopted. Our charge, I think, is to do
6 the actuarial work that's required for the system, not to
7 pass judgment on the viability of a benefit increase or
8 benefit change.

9 SENATOR C. GREEN: I guess your answer, then, is
10 you're not considering a conflict of interest either with the
11 employees or with the employer, the Governor or Governor's
12 Officer?

13 MR. MACTAS: No, I don't see it. If you can -- if
14 somebody can cite an example, I'd be happy to respond, but I
15 don't see it at this point.

16 SENATOR C. GREEN: Well, oftentimes we get into a
17 lot of negotiations with the PERS actuaries as far as our
18 contracts are concerned. Then they do assume maybe a little
19 different figure than they had previously to justify the
20 increase or decrease. That does happen.

21 You don't see it happening?

22 MR. MACTAS: Not at this point.

23 SENATOR C. GREEN: Those of us who have been around
24 a long time, it will happen.

25 Item number five:

26 "What standards and methodology will
27 be utilized by the contract actuary
28

to comply with the requirements of
702 specifically?"

MR. MACTAS: Yes, and in particular, having to do with the setting of assumptions, and doing the evaluation of the assets and liabilities of the system.

I might say that this type of work that's contemplated in the contract forms the core of TPF&C's business, and we do this everyday.

In the setting of assumptions, we normally perform what's known as experience studies, which is really an analysis of what's happened in the past and how the assumptions have lined up with the actual experience. In setting assumptions we also look to the future to see what we anticipate happening, given what's happened in the past, expectations for the future.

Also, I might just point to the standards of professional conduct of the actuarial profession are firm in undertaking evaluations, and they're of the highest order. Anything that we do in this regard will be fully disclosed in our reports so that people can assess all the decisions that have been made and the numbers that come out as a result of those decisions.

SENATOR C. GREEN: All right, I think that leads into the next question. Actually, I guess, because of our system with the PERS Board being the fiduciary and hiring of the actuary:

"Will the contract actuary make a

1 public presentation of their
2 determinations of these extremely
3 critical decisions before the PERS
4 Board?"

5 Before they're assimilated out to public, will that be your
6 first place to bring some of these actuaries to?

7 MR. COON: We've discussed, Senator Green, in some
8 detail the public access process that we would use in this
9 case. I guess the most critical thing that we're interested
10 in is having an open process which provides input to all of
11 the interested parties at the time the studies are started,
12 because that's really the key to it. What are the
13 assumptions? How are you going to go about doing this?

14 It is our feeling that there ought to be a public
15 forum to do that. At the start of the hearing, we could ask
16 the PERS Board to hold a public hearing to get that input.

17 I haven't talked to them about it, so I don't want
18 to speak for them, whether they're willing to do it or not.
19 We could have workshops, those kind of things.

20 Secondly, after all of that input is taken, and the
21 numbers are crunched, and that kind of process is made, it's
22 my understanding that the reports that would then be
23 published contain sufficient information that the Legislature
24 and the administration and the employee organizations could
25 look at those reports and make judgments about them, what the
26 decisions were based on, and they'd be open to public
27 criticism.
28

1 In regard to the specific question, would the PERS
2 Board hold a hearing in regard to these things, we would be
3 happy to participate in such a hearing.

4 SENATOR C. GREEN: I guess that's the bottom line.
5 I think it's very important for someone from your company, if
6 you are seated, to make a presentation of that particular
7 report, and then they won't have to read between the lines
8 and so forth of any of it.

9 MR. COON: I think the thing that we all need to
10 remember is that TPF&C is the PERS actuary. I mean, that's
11 the system, and they are responsible for it, and we certainly
12 intend to cooperate with them.

13 SENATOR C. GREEN: And they should be the first one
14 to see a report and have an oral presentation. I'd like to
15 impress upon you very heavily that that should happen.

16 MR. MACTAS: I'd welcome the opportunity to do
17 that, Senator.

18 SENATOR C. GREEN: Item seven is again on 702, and
19 this goes into your malpractice insurance cover liability,
20 and because of your fiduciary company, what type of
21 malpractice insurance and liability coverage do you have?

22 MR. MACTAS: Our firm maintains malpractice
23 insurance, and extensive, from what I've been told. I don't
24 take surveys of the consultant firms' liability insurance,
25 but we maintain errors and omissions coverage that's quite
26 substantial. I understand that it's as high or higher than
27 any other consulting firm maintains. And it covers errors
28

1 and omissions, professional negligence, those kinds of things
2 that we need to insurance against and give you comfort that
3 we have that type of coverage.

4 SENATOR C. GREEN: Is it confidential the amount of
5 that coverage?

6 MR. MACTAS: No.

7 SENATOR C. GREEN: What are those coverages?

8 MR. MACTAS: My understanding -- and I don't know a
9 lot of the details, other than I think there's a one million
10 dollar self-insured amount, and then \$60 million in coverage
11 over and above that.

12 SENATOR C. GREEN: So you have a maximum \$60
13 million as far as liability is concerned?

14 MR. MACTAS: Right.

15 SENATOR C. GREEN: Errors and omissions, what is
16 that?

17 MR. MACTAS: This is our errors and omissions
18 coverage.

19 SENATOR C. GREEN: The 60 million?

20 MR. MACTAS: Right.

21 SENATOR C. GREEN: And your total liability then --

22 MR. MACTAS: That's my understanding.

23 SENATOR C. GREEN: -- is 60 million, and \$1 million
24 of self insurance?

25 MR. MACTAS: Right.

26 SENATOR C. GREEN: In other words, you have the
27 deductible of a million dollars previous to a \$60 million
28

1 override as far as your umbrella policy?

2 MR. MACTAS: That's correct.

3 SENATOR C. GREEN: And number eight:

4 "Does TPF&C have the expertise and
5 resources necessary to accomplish
6 this task in the time-frame that is
7 adequate for the requirements of the
8 legislative process?"

9 Like right now, we're in some very heavy bills on the Floor,
10 and sometimes within a matter of 24 hours, we need an answer
11 back. Can you accomplish that?

12 MR. MACTAS: Yes. We're aware of the magnitude and
13 scope of this engagement. Our firm has extensive resources.
14 And not only do we have them, but we have quick access to
15 them. And before we even decided to bid on this project, we
16 wanted to make sure that those resources were there to
17 respond in the fashion that was necessary, given the unique
18 demands of the system.

19 So, we do have the expertise and resources
20 necessary, and we've got a commitment from our senior
21 management that those resources will be made available
22 whenever necessary.

23 SENATOR C. GREEN: Number nine, will the
24 legislative staff have access to the representatives, staff,
25 on some of this pending legislation, because some of our
26 staffs work staff-to-staff before it gets to us. And some of
27 these things are fixed before they ever get into the process
28

1 itself, and will that happen with your firm?

2 MR. COON: I think the answer to that is yes.

3 SENATOR C. GREEN: I guess this next one is a
4 leading question because it's having to do with the
5 Legislators' Retirement System and the Judges' Retirement
6 System. AB 702 was silent, and some of us are wondering, are
7 these actuaries going to be assumed by this contract?

8 MR. COON: Our view of this is that TPF&C would not
9 be authorized under AB 702 to assume the responsibility for
10 the Legislative Retirement System and the Judges' Retirement
11 System. It was not included in the Request for Proposals of
12 the bid, and it's not contemplated to be part of the service
13 that we're talking about here.

14 SENATOR C. GREEN: Will PERS still have the
15 actuarial staff to do that for the Legislative, and so forth?
16 I guess that's a direct question to you in your department.

17 MR. COON: Yes, there have been discussions, as I
18 understand it, between the Department of Finance, which
19 functions are going to remain in PERS and how much of that
20 staff would remain over there.

21 I can't give you a direct answer about the final
22 decision that's been made in regard to the fate of these two
23 systems.

24 Number ten here says:

25 "Will the contract actuary,
26 eventually, be delegated these
27 duties?"
28

1 You know, our view is that that would take
2 legislative action to put it within the process that we're
3 talking about here.

4 SENATOR C. GREEN: Thank you.

5 Let's go back to question number four, and I want
6 to give you a for instance on the conflict of interest.

7 What if an agency wants an evaluation, but the
8 Governor's Office doesn't want to authorize it and thinks it
9 maybe was not important and worth the time? Will your
10 company still perform those evaluations, even though the
11 Governor's Office is in opposition?

12 MR. MACTAS: I would allude to the process that was
13 discussed earlier, that being, a mechanism similar to the one
14 that's currently employed for local employer and public
15 agency requests to flow through to the PERS actuaries for
16 analysis is contemplated here.

17 We will be under contract with the Office of the
18 Governor, so if that process would result in a situation
19 where, similar to before, if the request was denied, if it
20 was denied now as far as being passed o to the actuary, we
21 wouldn't get it.

22 But, you know, I don't see conceptually how it's
23 very different than the current system. And since the
24 intention is to continue a similar process for analyzing such
25 requests --

26 SENATOR C. GREEN: That's where you're going to get
27 conflicts of interest, because, for instance, an outside
28

1 agency wants a study of some sort. Currently, they're
2 provided that with staff from the PERS Board. Now you're
3 going to be charging for that, and then charging PERS. They
4 might be in opposition to that because they're going to have
5 to pay the bill.

6 So, you're going to have to think about where these
7 conflicts of interest and who pays the money for these
8 particular studies. It is going to develop.

9 MR. COON: Senator Green, I'd like to respond a
10 little in a little more detail to that.

11 One of the issues, really, is how the billing
12 system works for these requested studies. And of course, our
13 contract with TPF&C does indicate that they'll be able to
14 charge their regular rate on a fee-for-service basis for any
15 of these service requests.

16 But PERS, at the present time, has a system set up
17 -- I'm not sure of all of the details -- but I think they
18 give, like, local governments one evaluation of a system
19 change free per year, and then there's a standard charge of
20 \$200 for doing the rest of -- other things.

21 SENATOR C. GREEN: And you're going to use that fee
22 schedule for this company in the future?

23 MR. COON: Well, I think the policy decision has to
24 be shared by PERS administration, but it is our goal to have
25 reasonably priced fee process to do that, and it would -- the
26 standards are generally going to mirror what PERS has done in
27 the past.
28

1 If they would have turned down some local
2 government request, say, "This is the third one and it's
3 frivolous, and we ain't going to do it," I would expect that
4 treatment to be the same now.

5 I can't imagine the Governor's Office being more
6 restrictive in turning down legitimate requests for
7 evaluations than is, you know, is currently in process.

8 This whole system is to serve the members of the
9 system and the employers who administer the system and the
10 PERS Board. Not to give them that good service or to raise
11 the fees to make that hard to do is just not in the cards.

12 SENATOR C. GREEN: I understand, but the fee right
13 now for a study is \$200.

14 MR. COON: Yes.

15 SENATOR C. GREEN: Your fee is \$200 an hour. And
16 if you take 10 hours at \$200 an hour, that's \$2,000.

17 If you have what the PERS fee is now, you know, I
18 figure in business language, and this is a company that's a
19 business, and they're going to charge their fee per hour.

20 MR. COON: The PERS process in the past has
21 provided a substantial subsidy for these requests, and we
22 would expect that to continue. We would not pass on the
23 whole -- we would not expect the contract fee to be passed on
24 to the people who have requested that process.

25 SENATOR C. GREEN: Mr. Felderstein came up with a
26 good thought.

27 Last year we did some work on Internal Revenue Code
28

1 415. Who is going to be monitoring this 415 process through
2 our PERS and STRS funds so that we won't get in trouble with
3 the federal government?

4 MR. MACTAS: I think the administration of the
5 system, actuarial matters resides where it's always resided,
6 and that's with the PERS Board and PERS staff. To the extent
7 that we're requested to analyze things related to 415 --
8 which, as you may recall, is near and dear to my heart --

9 SENATOR C. GREEN: Yes, you testified there.

10 MR. MACTAS: -- we're more than happy to add our
11 counsel there.

12 SENATOR C. GREEN: In other words, it will be
13 monitored through normal cycles of what it's doing now;
14 however, they're going to need facts and figures to monitor
15 for it, which they'll have to pay for --

16 MR. MACTAS: That's correct.

17 SENATOR C. GREEN: -- now, instead of putting staff
18 on to monitor it.

19 MR. MACTAS: They paid their staff before.

20 SENATOR C. GREEN: Yes.

21 Thank you, Senator Roberti. I think I have most of
22 my questions answered. I hope that it's been informative to
23 the Members.

24 CHAIRMAN ROBERTI: Very good, that's encouraging to
25 us.

26 Any other questions? Senator Mello.

27 SENATOR MELLO: Thank you, Mr. Chairman.
28

1 SENATOR C. GREEN: Oh, one last question, I'm
2 sorry.

3 CHAIRMAN ROBERTI: Senator Green, then Senator
4 Mello.

5 SENATOR C. GREEN: This is scuttlebutt. I got the
6 rumor that the Governor has, on all those contract questions
7 that the Auditor General had, that that was going to be fixed
8 in the contract.

9 MR. COON: That's correct.

10 SENATOR C. GREEN: Thank you.

11 CHAIRMAN ROBERTI: Senator Mello.

12 SENATOR MELLO: I touched just briefly on this
13 liability, and you stated you had this malpractice insurance.

14 You claimed you had a 10 million with a 50 million
15 backup, \$50 million, for errors and omissions.

16 Now, the amount of the fund for the state here is
17 around \$64 billion. Now, how big is your total portfolio for
18 all the funds that you handle?

19 MR. MACTAS: Well, the \$60 million figure is our
20 total errors and omissions coverage.

21 You know, there's -- you couldn't buy insurance in
22 the amount of 64 billion. As I said --

23 SENATOR MELLO: I'm not asking that. I'm asking
24 what's your portfolio? The total amount that your firm
25 handles for the entities?

26 MR. MACTAS: You mean as far as our revenues, or
27 the funds that we serve?
28

1 SENATOR MELLO: If the state fund is \$64 billion,
2 what's your total clients and --

3 MR. MACTAS: What do their funds total?

4 SENATOR MELLO: Right.

5 MR. MACTAS: That I don't know.

6 I do know that we handle many clients who have
7 funds in the billions. As I said, we handle the largest
8 share of the Fortune 1000 corporations.

9 SENATOR MELLO: I'm trying to find out how big is
10 your exposure to this \$60 million? What's your total amount
11 of your portfolio?

12 MR. MACTAS: It's a great deal. We have 8,000
13 actuarial clients. I don't know what the --

14 SENATOR MELLO: How much has been paid out by your
15 insurance or by the amount of self-insurance in the last
16 couple years?

17 MR. MACTAS: I'm sorry, I don't have information on
18 that.

19 SENATOR MELLO: You don't know at all?

20 MR. MACTAS: I don't think it's been much by
21 relative standards, but I don't have information on that.

22 SENATOR MELLO: The other question raised about
23 direct liability for your actuary, and the determinations
24 that you made are subject to challenge by either the employee
25 groups or the employer.

26 To what extent do you bear the direct risk of loss
27 based on your own determinations?
28

1 MR. MACTAS: I think to the extent -- to the extent
2 we make errors or we're professionally negligent, we're
3 liable. To the extent that we conduct ourselves in a
4 professional fashion and discharge our responsibilities in
5 accordance with the law, we're okay.

6 We take great pains to make sure that errors don't
7 creep in. We've got a significant system of quality
8 assurance procedures in place, checks and balances throughout
9 the system. And in addition, on this account, our senior
10 management will be involved in the quality assurance process
11 because of its importance.

12 But as I say, we are fortunate that we've earned
13 the reputation for high quality service, and we intend to
14 maintain that as part of this engagement.

15 SENATOR MELLO: I'm reading one of these letters
16 here where, I guess, the counsel to the fund stated that this
17 would be the first case whereby the actuary would not be
18 directly responsible for losses made by their own
19 determinations.

20 I guess other funds have some kind of a backup
21 insurance that's broader than yours.

22 MR. MACTAS: To my knowledge, that's not the case.
23 I don't think people have broader coverage than we do, and
24 I'm not sure where that statement's coming from.

25 I know there was some misunderstanding about
26 whether we were liable at all as part of this contract. We
27 will be liable for errors and omissions, professional
28

1 negligence. That's similar to other client situations that
2 we're in.

3 SENATOR MELLO: The errors and omissions and
4 professional negligence narrows it down. The window's very
5 small.

6 I mean, sometimes you make decisions that cost the
7 fund a lot of money, and it might come under that errors and
8 omissions category.

9 At any rate, thank you, Mr. Chairman.

10 I don't think that -- I don't know if there's any
11 employee groups here that wrote these letters in to testify
12 today, but I think, based on this, we have a lot of concern
13 here from the employee groups that are in the fund that are
14 not happy with your being awarded this contract. They're
15 quite frankly asking us to withhold this confirmation until
16 such time as we get a better --

17 CHAIRMAN ROBERTI: Would somebody like to come
18 forward on this?

19 MR. BAKER: Mr. Chairman and Members, thank you.
20 Steve Baker with Aaron Read and Associates, representing
21 various public employee groups, including a bunch of those
22 that have signed off on the letter.

23 First of all, we'd like to thank the Committee for
24 going into the detail that you have with answering some of
25 the questions. I think that DPA and the TPF&C
26 representatives have done a good job clearing up some of the
27 misconceptions that we've had.
28

I think there's still one issue that is outstanding in our minds. I know originally TPF&C representatives provided a written documentation to the effect that they had the goal of balancing the needs of the employees in the PERS fund with the fiscal constraints of the state.

We've got a real concern with that, given the size of the fund and with the recent court decisions that have come down that say, very clearly -- the recent court decisions are very clear that the fiduciary has an exclusive obligation to the members of the system, without taking a look at the fiscal constraints of the state.

That is still an outstanding issue that we just don't have clear in our minds.

Just again, kind of clear the air, I don't think we have a concern with the TPF&C representatives. From everything that we're aware of, they're an outstanding actuarial firm. But it's the agreement that they're going to enter into with the Governor's Office that we have some questions on.

Again, it's a \$64 billion fund. It's a lot of money. The state's contribution to the retirement system, general fund every year, is over \$500 million. That's --

CHAIRMAN ROBERTI: Would you like to address that?

MR. MACTAS: I certainly would.

I don't want there to be any misconception about the meaning of that statement that's alluded to.

There are also statements in our proposal that talk

1 about the responsibility of the employer to responsibly fund
2 the system.

3 But with regard to that particular statement about
4 the fiscal constraints under which the state must operate,
5 and balancing that against employee concerns, two comments.

6 One is, we're fiduciaries with respect to plan
7 members. That's in the law. That's in the RFP, and that's
8 where our loyalty is.

9 The statement about fiscal constraints relates to
10 our task of setting assumptions for the future. The fiscal
11 constraints under which the state operates has influence on
12 future events, such as the size of plan membership. That's
13 an influence to us. How fast salaries will go up, that's a
14 key assumption that we have to set for the future. And if
15 the fiscal condition of the state is such that employees will
16 get lower salary increases in the future than in the past, we
17 need to know that. That's all we intended by the statement.

18 I can't reiterate strongly enough that our
19 responsibility here is as fiduciaries to the members of the
20 system. It's in the law. We intend to abide by the law.

21 CHAIRMAN ROBERTI: Fine, thank you. I think your
22 statement's consistent with what the law is, in my
23 estimation.

24 Anybody else here that wishes to testify?

25 Then Senator Craven moves that Towers, Perrin,
26 Forster and Crosby be confirmed as the PERS actuary for
27 purposes of a contract to be entered into with DPA. I guess
28

1 that's the proper way of putting this motion.

2 SENATOR CRAVEN: Sure, send for the Bishop.

3 CHAIRMAN ROBERTI: Anybody else who wishes to
4 testify?

5 Then Secretary will call the roll.

6 SECRETARY WEBB: Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Senator Mello.

9 SENATOR MELLO: No.

10 SECRETARY WEBB: Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB: Senator Roberti.

15 CHAIRMAN ROBERTI: Aye.

16 The vote is four to one; the confirmation of the
17 firm for purposes of entering into a contract is recommended
18 to the Floor.

19 Thank you very much.

20 [Thereupon this portion of the
21 Senate Rules Committee hearing
22 was terminated at approximately
23 3:50 P.M.]

24 --oo0oo--
25
26
27
28


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